

ITEM NO.3

COURT NO.2

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19046/2013

(Arising out of impugned final judgment and order dated 06/03/2013  
in SA No. 224/2004 passed by the High Court Of Bombay At Nagpur)

VINAYAK S/O RAMBHAU MIRE (D) THR.LRS. Petitioner(s)

VERSUS

DATTANAGAR GRUHA NIRMAN CO-OP.H.S.LTD. Respondent(s)

(with interim relief and office report)

Date : 03/09/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. Manish Pitale, Adv.  
Mr. Chander Shekhar Ashri, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(Shashi Sareen)  
AR-cum-PS  
(Signed order is placed on the file)

(Veena Khera)  
Court Master

Signature Not Verified

Digitally signed by  
Shashi Sareen  
Date: 2015.09.08  
10:52:22 IST  
Reason:

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 6840 OF 2015  
(Arising out of SLP(C) No.19046 OF 2013)

VINAYAK S/O RAMBHAU MIRE (D) THR. LRS.

... Appellant(s)

Versus

DATTANAGAR GRUHA NIRMAN CO-OPH.S. LTD.

... Respondent(s)

O R D E R

Leave granted.

This appeal arises out of an Order dated 06.03.2013 passed by the High Court of Judicature at Bombay, Nagpur Bench whereby Civil Second Appeal 224 of 2004 filed by the respondent-Society has been allowed, judgment and decree passed by the First Appellate Court set aside and that passed by the Trial Court in Regular Civil Suit No. 480 of 1988 restored.

We have heard learned counsel for the appellant at some length. The respondent-Society has remained unrepresented despite service. The dispute it appears relates to a certain Plot No. 86 situate in Khasa No.

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3/3 and 3/4 of Mouza Harpur, Patwari Halka No. 39,

Circle No. 4, Umred Road, Nagpur.

The appellant who

was the plaintiff in Suit No. 480 of 1988 claimed to be

the owner of the said plot of land

but when he started

constructing a house on the same, the respondent-society

interfered to prevent him from doing so.

Aggrieved,

the appellant, the appellant

filed

the suit

aforementioned and sought a decree for permanent

injunction restraining the defendant-society

from

interfering with his possession or the on-going

construction over the suit site.

The defendant-society

appeared to dispute the file written statement and

dispute the plaintiff-appellant's

title and possession

over the plot in question.

One of the issues that was

therefore framed by the Trial Court was whether the

plaintiff-appellant herein was the owner of the suit

property. The parties led their evidence which the Trial Court appreciated to record a finding that the plaintiff had failed to prove his title qua the suit property. The suit was accordingly dismissed.

Aggrieved, the appellant preferred Civil 1st Appeal No. 483 of 1994 which was heard and allowed by the 16<sup>th</sup> Ad hoc Additional District Judge, Nagpur. The 1st Appellate Court reversed the judgment and order passed by the Trial Court and decreed the suit. The First

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Appellate Court held that since the father of the appellant was admitted the owner of the entire extent of land underlying Khasra No. 3/3 and 3/4 mentioned above and since only small parcels of the total extent had been sold to different purchasers, the fact that no sale deed in respect of Plot No. 86 had been executed by the erstwhile owner meant that the title to the same continued with the plaintiff who was entitled to protect his ownership and possession over the same.

The judgment and decree passed by the First Appellate Court was then assailed by the defendant-respondent-society in Second Appeal No. 224 of 2004 filed before the High Court at Nagpur. The High Court as noticed earlier allowed the said appeal and set aside the judgment and decree passed by the First Appellate Court restoring that passed by the Trial Court. The present appeal assails the correctness of the said order.

It was contended by learned counsel for the appellant that the High Court has fallen in an error apparent on the face of the record inasmuch as the High Court has erroneously assumed that the First Appellate Court had recorded a finding that Plot No. 86 was sold by the plaintiff-appellant herein on 15.03.1971 by a registered sale deed marked Exhibit 54. This finding of the High

Court, it was contended, was contrary to the record inasmuch as the First Appellate Court had unequivocally held that no sale in respect of Plot No. 86 was proved to have been made by the erstwhile owner. The First Appellate Court had while examining whether the defendant had proved the sale of Plot No. 86 in favour of Mr. Chaphekar vide Exhibit 54 come to the conclusion that Sale Deed marked Exhibit 54, Plots No. 79 and 86 were shown to be adjacent to each other. The First Appellate Court had according to the learned counsel clearly rejected the contention of the defendant-society that the disputed plot was sold by the plaintiff's father to Sh. Chaphekar. Reliance in support was placed upon the following observations made by the First Appellate Court:

"It means, according to DW-2 Chaphekar Plot Nos. 79 and 86 are adjacent to each other. Then, let us peruse the documentary evidence i.e. sale deed of Shri Chaphekar (DW-2). Here, it is only relevant to consider the four boundaries of the plots sold out by the Plaintiff's father to Shri Chaphekar vide Exh. 54. In it, Plot Nos. 79 and 86 are shown in these two plots size East West 65 ft. and South-North 76 ft. and width of this plot towards East is 36 ft. and towards West 25 ft. total area is 2150 sq. ft. Four boundaries are

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also given of entire Plot Nos. 79 and 86. From bare perusal of the four boundaries and measurement of Plot Nos. 79 and 86, mentioned in the sale deed Exh. 54, it is clear that Chaphekar's plot is a common plot numbers as 79 and 86. Therefore, the contention of the Defendant that disputed plot is sold out by the Plaintiff's father to one Shri Chaphekar (DW-2) is not correct. Moreover, DW-2 Shri Chaphekar cannot depose that disputed plot is belonged to him. It is only his contention that number of his plot 86 is given to the road by the plaintiff, therefore, from the documentary evidence Exh. 54 as well as from the oral evidence of D.S.-2, it is clear that Plot No. 86, i.e. suit plot is totally different plot which was not sold out by the plaintiff's father to one Shri Chaphekar. Therefore, the defendant's case that plaintiff's father sold out suit plot No. 86 to

one Shri Chaphekar is not acceptable."  
(emphasis supplied)

The above finding does not prima facie lend itself to the interpretation that the First Appellate Court had held that Plot No. 86 also stood sold by the father of the plaintiff in terms of the registered sale deed marked Exhibit 54. While it is true that the finding recorded by the First Appellate Court itself may sound somewhat confused, the inference drawn by the High Court that the said finding tantamounts to a finding

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that Plot No. 86 was sold by the plaintiff on 15.03.1971 does not appear to be entirely correct. Be that as it may, the present in our opinion is a fit case where the matter could and ought to be remitted to the High Court to answer the substantial questions of law which it may frame for determination having regard to the pleadings of the parties and the evidence on record.

We accordingly allow this appeal, set aside the judgment and order passed by the High Court and remit the matter back to the High Court for a fresh hearing and disposal in Second Appeal No. 224 of 2015. We make it clear that we have not expressed any opinion as to the merits of the contentions which the parties may urge before the High Court. No costs.

.....J.  
(T.S.THAKUR)

.....J.  
(KURIAN JOSEPH)

New Delhi,  
3rd September, 2015.