

(2020) 01 BOM CK 0045

In the Bombay High Court

Case No : Second Appeal No. 120 Of 2011

Godawaribai Purushottam Bawaskar

APPELLANT

Vs

Sitaram Bhagwan Paithane And Ors

RESPONDENT

Date of Decision : 03-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 47, 96, 100, 152, Order 7 Rule 3, Order 41 Rule 31, Order 20 Rule 3, Order 41 Rule 31(c)

Citation : (2020) 01 BOM CK 0045

Hon'ble Judges : Avinash G. Gharote, J

Bench : Single Bench

Advocate : Jaideep J. Chandurkar

Final Decision : Dismissed

Judgement

1. Heard. For the sake of convenience, parties are referred to as they were arrayed before the Trial Court. The appellant who is the original plaintiff had filed a suit for permanent injunction for restraining the defendants from obstructing his peaceful cultivating possession over the suit property and confirmation of his possession. The suit property is a land bearing Gat No.403 admeasuring 0.43 R situated at village Kolwad, description of which is given in para no.2 of the judgment of the Trial Court. Though the description thereon states that the suit property is in the form and in the shape of "L", however the learned Trial Court in spite of holding that the plaintiff had established purchase of the land of Gat No.403 admeasuring 0.43 R by virtue of the sale deed dated 15.11.1995 and that the plaintiff was in cultivating possession, dismissed the suit on the ground that the description as given in the plaint in respect of the suit property and that as contained in the sale deed did not tally. The learned Trial Court also observed that to show that the holding of the plaintiff was of "L" shape out of which one leg was 0.38 R and the other leg was 0.5 R, the plaintiff had not filed any plan and/or sketch map, nor had she got it measured from the T.I.L.R. so that proper description of the property could be availed on record. The learned Trial Court

relied upon Order 7 Rule 3 of the CPC and found that the boundaries as mentioned in the sale deed at Exhibit 32 did not support the claim of the plaintiff that the land purchased under the sale deed was in "L" shape and the obstruction was of one leg of this 'L' and dismissed the suit by the judgment and decree dated 30.01.2006.

2. Being aggrieved by this, the plaintiff preferred Regular Civil Appeal No.24 of 2006 before the Principal District Judge, Buldana who also found that in absence of proper and correct description of the property and further in absence of a plan showing location of the suit property, the contention of the plaintiff that the property was "L" shape could not be accepted and dismissed the appeal. Hence this second appeal.

3. While admitting the Second appeal on 24/8/2011, the following substantial question of law was framed:

"Whether the Courts below committed an error in holding that the appellant mis-described the suit property in the plaint because the description did not tally with the recitals in the sale deed, particularly when the finding about title and possession both has been recorded by the Courts below in favour of the appellant/plaintiff."

4. On 29/8/2019, this Court in addition to the substantial question of law as framed earlier, deemed it appropriate to frame the following substantial question of law:

"Is the judgment of the first appellate Court in conformity with the provisions of Order XLI Rule 31 of the Civil Procedure Code"

5. Heard Shri Jaideep J. Chandurkar, learned counsel for the appellant. None appears for the respondents though served on merits.

6. Shri Chandurkar, learned counsel for the appellant contended that there is no dispute about the acquisition of title to the land of Gat No.403 admeasuring 0.43 R by the appellant. In fact, the learned Trial Court as well as Appellate Court both have found that by virtue of sale deed dated 15.11.1995 title and possession was transferred to the appellant in respect of land bearing Gat No.403 admeasuring 0.43 R. He further submitted that both the Courts below have thus erred in refusing to pass the decree in favour of the appellant.

7. The issue of title of the plaintiff to the land of Gat No.403 admeasuring 0.43 R has been decided by the both the Courts holding that the plaintiff under the sale deed dated 15.11.1995 has acquired the title to the land of Gat No.403 admeasuring 0.43 R. This position has also not been disputed by the respondents. The title of the plaintiff over land under the sale deed dated 15.11.1995, thus cannot be a matter of question or dispute.

8. A perusal of the record demonstrates that though in the plaint the description of the property was claimed to be in "L" shape the sale deed dated 15.11.1995

did not support this position. The plaintiff, has come to the court with a specific case that the suit property was in "L" shape, of which his possession in respect of one leg, which was claimed to be admeasuring 0.50 R, was being obstructed by the defendants. This however was neither reflected from the sale deed dated 15.11.1995, nor from the boundaries as stated therein of the land sold. The defendants in their written statement, as is reflected from the judgment of the Trial Court, had specifically denied the transfer of the land admeasuring 0.5 R to the plaintiff, over which obstruction was being claimed. In that light of the matter, the proper and correct description of the suit property, assumes significance.

9. The plaintiff for reasons best known to her did not file a sketch or a map to show the description of the suit property or for that matter got it measured from the appropriate Authorities, so that the description could have been available to the Courts below. In absence of a correct description of the suit property, no effective decree can be passed.

10. In this regard the provision of Order 7 Rule 3 of Civil Procedure Code being material is quoted as under:

Order 7 Rule 3:

"3. Where 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."

11. The Bombay High Court amendment w.e.f. 1/10/1983, only adds the following sentence to O.7 Rule 3, "In case of encroachment a sketch showing as approximately as possible the location and extent of encroachment shall also be filed alongwith the plaint."

12. The very purpose of Order 7 Rule 3 of the Civil Procedure Code is to ensure that there is description of the suit property sufficient to identify the same, which is with the intent and purpose that in case a decree is passed, it ought to be an executable decree and does not remain a mere paper decree.

13. In *Laxman Singh v. Jagannath*, 1999 SCC OnLine MP 271 : (2000) 1 MP LJ 79 it has been held as under:

"10. The purpose of Order 7, Rule 3 of the Code is that unless the plaintiff indicates the identity of the property claimed by him either by means of boundaries or by means of map as required by Order 7, Rule 3 of the Code, it would be difficult for the Court to find whether the plaintiff has title to the property claimed and whether any encroachment or dispossession has been made by the defendant. Thus the duty of the party is to give description sufficient to identify the property in dispute. If such decree is passed, it shall be unworkable. The Court can only pass a decree which can be executed under

Order 21 of the Code"

14. The hon'ble Apex Court in the case of *Pratibha Singh v. Shanti Devi Prasad*, (2003) 2 SCC 330, has held as under:

"15. Order 7 Rule 3 CPC requires where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such description enables the court to draw a proper decree as required by Order 20 Rule 3 CPC. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. Having perused the revenue survey map of the entire area of RS Plot No. 595 and having seen the maps annexed with the registered sale deeds of the defendant judgment-debtors we are clearly of the opinion that Sub-plots Nos. 595/I and 595/II were not capable of being identified merely by boundaries nor by numbers as sub-plot numbers do not appear in records of settlement or survey. The plaintiffs ought to have filed the map of the suit property annexed with the plaint. If the plaintiffs committed an error the defendants should have objected to it promptly. The default or carelessness of the parties does not absolve the trial court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming the subject-matter of the suit being filed.

17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case - which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC." (emphasis supplied)

15. Similar position is reiterated in *Zarif Ahmad (Dead) Through Legal Rep. Vs. Mohd. Farooq*, (2015)13 SCC 673, in the following words:

"11. - The object of the above provision is that the description of the property must be sufficient to identify it. The property can be identifiable by boundaries, or by number in a public record of settlement or survey. Even by plaint map showing the location of the disputed immovable property, it can be described."

16. In the instant case, though the survey number has been mentioned, as

Survey no.403, and the boundaries have been stated in the plaint, the insistence of the plaintiff, is as to the shape of the land, which is claimed to be in "L" shape, of which one leg is claimed to be admeasuring 0.38 R and the other 0.5 R. It is in respect of this leg admeasuring 0.5 R, that the decree is being claimed. A comparison of the description of the suit property as described in the plaint, with that in the sale deed at Ex. 32, demonstrates that the case as propounded by the plaintiff, is not borne out. Nothing in the sale deed dt. 15.11.1995, gives any inkling as to the property as sold therein, being of "L" shape.

17. It is trite to say that for the purpose of obtaining an effective decree which can be executable in law, the correct identifiable description of the suit property is a must, otherwise the decree remains a paper decree, unexecutable due to non-identification of the property to which it relates . Considering the mandate of Order 7 Rule 3 and the fact that there is no plan or map by which the suit property can be identified the Courts below have correctly appreciated the matter.

18. That apart this is not a case where the relief has been claimed in respect of the entire land of Gat No.403, so that the same could be identifiable by the mere mention of the Gat No. On the contrary the relief is in respect of one portion of the land of Gat No.403, namely one leg admeasuring 0.5 R, over which it is claimed obstruction is being caused by the defendants. Thus the very identity of the property in respect of which relief is being sought in the plaint, is doubtful, as has been rightly found by both the Courts below. In spite of objections as to the identity of the suit property having been taken in the Trial Court itself by the defendants in their written statement, the plaintiff has not taken care to place on record a plan/sketch or apply for inspection and measurement by any Authority or a Court Commissioner, so that the location and shape of the land in question could be brought on record. It was necessary for the plaintiff to demonstrate on record that the suit property i.e. land admeasuring 0.5 R, in respect of which obstruction was being alleged was a part and parcel of the land admeasuring 0.43 R of Gat no.403, which could only have been done, by way of a plan. The plaintiff having failed to do so, has only herself to blame and none else.

19. Order 7 Rule 3 C.P.C. thus though not mandatory as reflected from Pratibha Singh (supra), since the defect in description can also be cured in execution proceedings, however, for the passing of an effective decree, it is necessary, that in every suit, where relief of possession is claimed in respect of immoveable property, a plaint map should be filed showing the location, description, area, dimensions, boundaries of the suit property, so that all parties are aware as to the nature and extent of the suit property which is the subject matter of the lis. The defendant must know in respect of which property the plaintiff is seeking relief so that he can explain his stand in respect of the same. So also the Court should also be able to ascertain from the record the correct position, location, area, dimensions of the suit property, so that an effective and executable decree can be passed. In a given case, the Court can, if it finds that there there is difficulty, in identifying the suit property, direct the plaintiff to cure the defect, so

that an accurate description of the suit property is available on record. Thus no fault can be found on this count with the impugned judgments.

20. This leads us to the claim with respect violation of the mandate of Order 41 Rule 31(c) C.P.C. In this regard Shri Chandurkar, learned Counsel contented that it was obligatory upon the First Appellate Court to give reasons for concurring with the findings of the Learned Trial Court. According to him, there are none, due to which the judgment and decree of the Learned First Appellate Court stands vitiated. He further contends that the judgment of the Learned First Appellate Court runs into merely 7 pages and in 2 paras, the entire appeal has been dismissed.

21. Mr. Chandurkar in support of the above submission has placed reliance upon *U. Manjunath Rao v. U. Chandrashekar*, (2017) 15 SCC 309 wherein it has been held as under:

"7. It is well settled in law that the reason is the life of law. It is that filament that injects soul to the judgment. Absence of analysis not only evinces non-application of mind but mummifies the core spirit of the judgment. A Judge has to constantly remind himself that absence of reason in the process of adjudication makes the ultimate decision pregnable. While dealing with the first appeal preferred under Section 96 CPC, the Court in *State of Rajasthan v. Harphool Singh* [*State of Rajasthan v. Harphool Singh*, (2000) 5 SCC 652] took note of the exception to the judgment passed by the first appellate court by observing that there was no due or proper application of mind or any critical analysis or objective consideration of the matter, despite the same being the first appellate court."

22. He has also relied upon *Kanailal v. Ram Chandra Singh*, (2018) 13 SCC 715 wherein it has been held as under:

"9. Mere perusal of the impugned order quoted supra would go to show that the High Court while deciding the appeal neither set out the facts nor the submissions urged by the appellants in support of their appeal and nor gave any reason as to why the submissions urged by the appellants have no merit and why the appeal does not involve any substantial question of law as is required to be made out under Section 100 of the Code. (See *Jayanmti De v. Abani Kanta Barat* [*Jayanmti De v. Abani Kanta Barat*, (2011) 6 SCC 455] and *Santosh Hazari v. Purushottam Tiwari* [*Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179].)

10. This Court has consistently emphasised the need for assigning reasons in support of its conclusion and while doing so must deal with all the issues raised by the parties to the lis. Indeed, this Court has made the following very pertinent observations on this issue in *Union of India v. Jai Prakash Singh* [*Union of India v. Jai Prakash Singh*, (2007) 10 SCC 712] which read as under: (SCC pp.714-15, para 7)

"7. '11. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

12. ... Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.'

16. If however, the Court, at the time of hearing the appeal on the question of admission, comes to a conclusion that the appeal does not involve any such question within the meaning of Section 100 of the Code, then it has to pass a reasoned order keeping in view the requirements of Order 41 Rule 31 set out above. Indeed, this being the mandatory requirements of law, its non-compliance by the appellate court render their judgment bad in law. "

23. There cannot be any dispute with the propositions as enunciated by the Hon'ble Apex Court in the above judgments. However what has to be looked into is whether the judgment of the First Appellate Court is bereft of any reasons.

24. In this context it is material to state that content and quality and not volume is of essence. A perusal of the judgment of the Learned First Appellate Court demonstrates that the mandate of Order 7 Rule 3 C.P.C. has been correctly appreciated by it, though O.7 R.3 C.P.C. is not specifically mentioned therein. It is correctly appreciated that the sale deed of the plaintiff, did not anywhere mention that the land purchased was in two parts, one horizontal portion and the other vertical. It has further considered that the boundaries as given in the sale deed, do not tally with the boundaries as mentioned in the plaint. It has further held that in order to clarify the location of the suit property, map of Gat no.403, was necessary, in absence of which it was very difficult to draw any conclusion as to the claim being made by the plaintiff, as to the land admeasuring 0.5 R, which was a portion of the entire land of Gat no.403, as purchased by the plaintiff. Thus sufficient reasons have been given by the Learned First Appellate Court for dismissal of the appeal and there is no violation of the mandate of O.41 R.31(c) C.P.C.

25. Thus there is no substantial of law involved. The Courts below have properly appreciated the matter. In light of the material on record the appeal is devoid of any merit and is dismissed accordingly. No costs.