

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2452 OF 2010

RAMBHAU GANPATI NAGPURE

...APPELLANT(S)

VERSUS

GANESH NATHUJI WARBE & ORS.

...RESPONDENT(S)

J U D G M E N T

DEEPAK GUPTA, J.

This appeal is directed against the final judgment and order dated 28.01.2009 passed by the High Court of Judicature at Bombay, Nagpur Bench whereby the second appeal filed by the appellant was dismissed on the ground that no substantial question of law arose.

2. Brief facts of the case are that the parties owned agricultural land adjoining each other in Mouza Sirsi. The plaintiffs (Respondents before us) filed a suit claiming that the ancestral land of the plaintiffs was about 6.07 hectares, and to the south of the field of the plaintiffs lay the defendant's (Appellant before us) field and the area of the land owned by the defendant was 4.23 hectares. A re-survey was done in

the year 1991 and in the re-survey the land of the defendant was shown to be 5.3 hectares, which was in excess by 1.07 hectares.

3. Thereafter, the plaintiffs filed an application before the Sub Divisional Officer (S.D.O. for short), Umrer, and got the field re-measured as per the old record. Thereafter, the S.D.O. by his order dated 31.07.2000 directed the Taluka Land Inspector for correction of revenue record whereby the original position of the field was restored. In the revenue record, the area and maps of the plaintiffs' field as well as 7/12 extract of the field of plaintiffs was corrected.

4. The case of the plaintiffs was that the defendant erected wire-fencing, encroached upon the land of the plaintiffs and, therefore, the suit was filed for possession of the land encroached by the defendant.

5. It would be pertinent to mention that an appeal was filed by the defendant against the order of the S.D.O. before the Settlement Commissioner who remanded the case to the S.D.O. for fresh inquiry and fresh order. The Superintendent of Land Record of Nagpur verified the spot on 27.11.2002 and submitted a proposal report to the S.D.O. Since the order passed was against the plaintiffs, therefore they had brought this suit for possession.

6. On 03.01.2005 the Civil Judge decreed the suit and held plaintiffs to be entitled to possession and directed the defendant to deliver the possession of the disputed land. Defendant filed a regular civil appeal challenging this order and the appeal was dismissed by the District and Sessions Judge on 03.05.2008. Challenging this, the appellant filed a second appeal which was dismissed by the High Court on 28.01.2009. All the courts have held that the defendant has encroached upon the land of the plaintiffs. These are pure finding of facts which cannot be interfered with in these proceedings.

7. It has been strenuously urged by the learned counsel for the appellant that, in fact, the boundary between the two fields contained trees and this was proved by the evidence on record. We are not impressed with this argument. If there was a boundary with trees, how can that be replaced with a fence? Another important fact is that despite repeated queries, learned counsel for the appellant could not explain as to how the land in their ownership and possession which prior to the re-survey was only 4.23 hectares got increased to 5.3 hectares. The only explanation given was that to straighten the boundary some land was exchanged with some relatives. No evidence was placed on record to prove this.

8. Two legal issues have been raised. The first is that the map has not been proved in accordance with Section 83 of the Indian Evidence Act, 1872. It is urged that the plaintiffs have not proved the map. On going through the records, we find that the map was prepared on the directions of the S.D.O. No doubt, after the map was prepared, the order of the S.D.O. directing for preparation of the map was set aside, but that will not affect the evidentiary value of the map which depicts the position of the boundaries as per the holdings of the parties. This map was prepared by the Revenue authorities and not by the plaintiffs/respondents.

9. The next objection raised is that under Section 138 of The Maharashtra Land Revenue Code, 1966 the suit is not maintainable. We find that this objection is totally without any merit. In fact, Section 138 clearly provides that a civil suit can be instituted against any order of ejectment. No provision has been pointed out where the jurisdiction of the civil court has been specifically barred.

10. In view of the above discussions, we find no merit in the appeal and the same is dismissed. Application(s), if any, shall also stand dismissed.

.....**J.**
(Deepak Gupta)

.....**J.**
(Aniruddha Bose)

New Delhi
September 17, 2019