

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

SECOND APPEAL NO.: 397 OF 1991

1. Ramrao S/o Kaduba Badar,
(Since deceased through L.Rs.)

1-A) Narayanrao S/o Ramrao Badar,
Age: 45 years, Occu.: Agri.

1-B) Govind S/o Ramrao Badar,
Age: 40 years, Occu.: Agri.

1-C) Kaveribai W/o Ramrao Badar,
Age: 67 years, Occu.: Household,

All R/o Walsa Khalsa, Tq. Bhokardan,
District. Jalna.

... **APPELLANTS:**

VERSUS

Lalsha S/o Mannusha

... **RESPONDENT:**

Advocate for the Appellants: Mr. S. B. Parnere.

Advocate for Respondent: Mr. P. P. Kothari, Advocate h/f Mr. U. B. Bora.

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**CORAM:-
DATED:-**

**T. V. NALAWADE, J.
15th SEPTEMBER, 2015.**

JUDGMENT:

1. The appeal is filed to challenge the judgment and order of Regular Civil Suit No.57 of 1978 which was pending in the Court of learned Civil Judge, Junior Division, Bhokardan, district Jalna and also the judgment and order

of Regular Civil Appeal No. 190 of 1983 which was pending in the Court of learned Additional District Judge, Jalna. The suit filed by present Appellant for possession and also for declaration is dismissed. Both the sides are heard.

2. The suit was filed in respect of one house property situated at village Walsa Khalsa, Taluka Bhokardan, District Jalna. The boundaries of the suit property are given by giving the names of adjacent owners and by showing one public road on eastern side. The size of the property is given as 25'x20'. It is two storied building.

3. It is the case of the plaintiff that he had given the suit property on monthly rent of Rs.10/- to defendant with effect from 1st June, 1975. It is contended that the defendant never paid the rent regularly and he is willful defaulter. It is contended that notice under section 106 of T.P.Act was given on 11st August, 1978 and the defendant was asked to pay the arrears of rent and to hand over possession and as they failed to do so, the suit was required to be filed. After filing of written statement by the defendant, in which he denied that he was a lessee in the suit property, the plaintiff amended the plaint and prayed for relief of declaration of ownership.

4. The defendant contested the matter by filing written statement. It is the case of defendant that he has been in possession of the suit property as the owner and he is not a tenant of plaintiff. It is his case that even prior to the creation of record of Gram Panchayat defendant was in possession of the property which was legal possession and which is continuous possession. It is contended that the plaintiff is trying to grab the property and so by making false contentions suit is filed.

5. Issues were framed by trial Court and both the sides gave evidence. The trial Court has held that the plaintiff has failed to prove the ownership and so the suit is dismissed. The Appellate Court has confirmed this finding.

6. This Court admitted the appeal and order shows that the points mentioned in Ground No.1, 2 and 5 of appeal memo are to be used for formulating substantial questions of law.

7. Following points can be considered as substantial questions of law:

- (i) Whether the Courts below have committed error in not considering the material on the record which is given to prove the ownership?

(ii) Whether the finding of the Courts below is perverse?

8. The Courts below have observed that there is no specific pleading in respect of the ownership and it is not contended as to how the plaintiff had become owner of the suit property. It appears that only during evidence plaintiff produced a certified copy of a sale deed which was registered and which was executed in the year 1966. Permission was given to prove this document as secondary evidence as the plaintiff came with a case that he has lost the original sale deed. One Officer from the office of Sub Registrar is examined. As it was registered sale deed, the contents can be seen and they show that the owner Sampat Dagadu Jadhav had sold house property to Ramrao Kondu Badar for consideration of Rs.600/-. The property is shown as house property from village Walsa Khalsa. On eastern side of the property lane was shown, on western side the house of one Eknath Bhaurao was shown, on northern side the house of one Kashirao was shown and to south the house of Bhaurao Dhondba was shown. The size of the open space was shown as 25'x20' and the house was of 5 Khan and two storied. The possession was shown to be given on the date of execution of the sale deed.

9. The property which is in possession of defendant was given house No. 99 when the first time assessment record was prepared by village Panchayat in the year 1982-83 and then numbers were changed. In the record of assessment prepared by village Panchayat defendant is shown as the owner. Admittedly there is such record in favour of defendant. The tax receipts and certificate issued by village Panchayat to that effect are on the record and they show that in the year 1990 the property in possession of defendant was given house No.120. Though defendant has given evidence that this property was purchased from Sampat Jadhav, the vendor of the property of plaintiff under Exhibit-41, he is not admitting that, his property was sold by Sampat Jadhav to plaintiff. In these circumstances and when the suit involves the relief of declaration of ownership it was necessary for the plaintiff to show that the property shown in Exhibit-41 is in possession of the defendant.

10. Plaintiff has given evidence that he had given the property which is in possession of defendant on rent basis to defendant in the year 1975 and monthly rent was Rs.10/-. The suit was filed in the year 1978 and the

evidence of plaintiff was recorded in the year 1983. One witness of plaintiff like Sandu has deposed that Sampat, vendor of plaintiff, left the suit property about 22 to 23 years prior to date of his deposition. One Advocate Thombre is examined by plaintiff to prove the notice given to the Respondent. There is no need to discuss the evidence of Thombre. Trimbak Sawant is attesting witness on the sale deed but his evidence shows that he has no personal information about the family of Sampat, vendor and the transaction. He has specifically admitted that he had not signed on the sale deed which was allegedly executed by Sampat. He could not describe the house which is in possession of defendant.

11. On the other hand, defendant has given evidence that his father had purchased this house from Sampat about 25 to 30 years back and when his father took the possession the house was not occupied by anybody. He has deposed that right from beginning the record of village Panchayat is in his favour. He has denied that he had taken the possession as a tenant of plaintiff. he also could not produced the sale deed. He has given evidence that he has been in possession for more than 24-25 years.

Defendant has examined a son of said Sampat, Sarjerao and he has given evidence that defendant has been living in this house for more than 20-25 years as the house was sold by Sampat to the family of defendant. One Dagadu Jadhav is examined by defendant to show that defendant has been living there for more than 20-25 years and no other person had occupied this house prior to defendant.

12. The aforesaid evidence is considered by both the courts below and finding is given that the plaintiff has failed to prove the title in respect of the suit property. When the burden was on the plaintiff, it was necessary for him to show that the property described in the sale deed is in possession of defendant and that too as contended by him, as tenant. Evidence is given by defendant that he has been in possession for more than 25 years of the suit property as the owner. The record of assessment created by village Panchayat is in favour of defendant and plaintiff did not make any attempt to call anybody from village Panchayat to show that from 1966 till 1975 his name was there as the owner in respect of the property in possession of the defendant and the same property was subsequently given house NO.99. Such evidence could have been easily

given. Due to absence of such evidence, the Courts below have rightly given decision against plaintiff. So, the aforesaid points are answered against the appellant and the appeal stands dismissed.

[T. V. NALAWADE, J.]

Dated:15/09/2015.
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