

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Notes, Office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.
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SECOND APPEAL NO. 478 OF 2013

**WITH CA/3918/2013 IN SA/478/2013 WITH
CA/9146/2015 IN SA/478/2013**

KASHINATH LAXMAN DHOLE AND OTHERS

VERSUS

SAHYADRI BAHUJAN VIDYA PRASARAK SAMAJ
SANGAMNER AND OTHERS

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Advocate for Appellants : Smt. Zaware Suvarna M .

Advocate for Respondent Nos. 1 to 4: Mr. V. R. Dhorde.

CORAM: T. V. NALAWADE, J.
DATED: 28th SEPTEMBER, 2015.

PER COURT:

1. The appeal is filed against the judgment and decree of Regular Civil Suit No.747 of 1982 which was pending in the Court of Civil Judge, Junior Division,

Sangamner, District Ahmednagar and also against judgment and order of Regular Civil Appeal No. 148 of 2000 which was pending in the Court of District Judge-1, Sangamner, District Ahmednagar. The suit filed by Respondent, educational trust, for possession of house property is decreed in favour of the trust. Both sides are heard.

2. It is the case of the plaintiff that it is the owner of Survey No.371/1A and also of Survey No. 371/B1/B2 to the extent of 38 Ares portion and this property was purchased in the year 1974 by plaintiff from its owner, one Ginning Mill. It is contended that there is one house property in this land and the Ginning Mill was in possession of this land. It is contended that along with the land, the possession of the house was also given to plaintiff by the vendor.

3. It is the case of plaintiff that, in the month of May, 1974, the defendants forcibly took the possession of this house. It is contended that the defendants are trespassers and they have no right to retain the possession of the suit property. Relief of possession of

this house was claimed. Defendant No.1 is the husband of defendant No.2 and defendant No.3 is a son of defendant No.1. Defendant No.4 is the wife of defendant No.3.

4. Defendant Nos.1 and 3 filed joint written statement and they contested the suit. It is their case that the defendants have never sold the house property to anybody. It is contended that some open space surrounding the house property also belongs to defendants. It is contended that if there is a mention in the sale deed of 1974 that the house property was also sold that is a false content and only due to such mention in the sale deed, the plaintiff cannot become owner of the house property.

5. It is the case of the defendants that they have been in possession of this house for more than 23-24 years and the land came within the jurisdiction of local body Municipality in the year 1966 and since then the defendants are paying property tax. It is contended that the predecessor in title of plaintiff, to whom the property was sold by defendant, had never claimed ownership

over this house property. It is contended that as the defendants are in possession of the suit property for more than 12 years they have become owner due to adverse possession.

6. Issues were framed on the basis of aforesaid pleadings and both the sides gave evidence. The defence of tenability of the suit was taken in the trial Court as the plaint was signed by Secretary of the trust. Subsequently, the trustees were also made plaintiffs and that point was finally decided. This point was not pressed in the present matter.

7. The learned counsel for the Appellant mainly argued on the defence taken of adverse possession. She made mention also about contents of sale deed executed in favour of the predecessor in title of plaintiff. She drew the attention of this Court to the contents and submitted that there is possibility that the house property was added subsequently in the sale deed of 1966 executed in favour of the vendor of plaintiff. It is a registered sale deed and so this Court needs to go with the presumption that the sale deed, as it is, was

registered. There was no evidence given on fraud. When a piece of land bearing particular number is sold and there are some structures on this land it needs to be presumed that along with those structures the land was sold unless those structures were specifically excluded in the sale deed by mentioning that those structures were not sold.

8. Both the Courts below have held that there is no specific pleading with particulars with regard to the claim of ownership due to adverse possession and so there is no convincing evidence to prove that the defendant has become owner due to adverse possession. The Courts below have placed reliance on the case reported as **AIR 1964 SC 1254 [S. N. Karim V/s B. B. Sghakina]**. The Apex Court has laid down that there needs to be specific pleading with particulars like the time of starting of adverse possession, continuous possession and the claim over the property and acts of the defendant as owner over the property. In this regard, in the trial Court, some receipts of house tax were produced of few years. In the present proceeding,

the learned counsel for the Appellant submitted that there are more house tax receipts and they can be considered for consideration of the case of adverse possession. The tax receipts are of 1971 and 1973. It appears that in the local body, in the assessment record the name of defendant No.1 was entered as owner of this property. This also cannot help the defendant to prove that it was a continuous possession for the period of 12 years and as the owner, it was adverse against the true owner. On the other hand, there is mention in the sale deed executed by defendant No.1 that the land along with the house property was sold and possession was given. There is similar mention in the sale deed executed in favour of plaintiff by the institute which had purchased the property from defendant No.1. Witnesses are also examined by plaintiff to show that in the year 1974 plaintiff had got the possession under the sale deed of January, 1974. Specific evidence is given that by breaking open the lock of the house the possession was taken by defendant and prior to the sale deed of January, 1974 the watchman of the Ginning Mill was in possession.

9. Even if the evidence given by the plaintiff that the possession was forcibly taken by defendant in the year 1974 is ignored, it was up to the defendant to prove the case of adverse possession, to prove that it was for the period of more than 12 years on the date of suit. Only few receipts of house tax are not sufficient to prove that it was a continuous possession for the period of 12 years prior to the date of suit.

10. It is true that the point of adverse possession is a point of law but there needs to be something more for formulation of substantial question of law. The material on the record is not sufficient to make out the case of adverse possession and it cannot be said that the Courts below have not considered the material and there is perversity.

11. The learned counsel for the Appellant placed reliance on some reported cases. In the case reported as **AIR 2009 SC 103 (1) [Hemaji Waghaji Jat V/s Bhikhabhai Khengarbhai Harijan and Ors.]** the Apex Court expressed that it is necessary for the Government of India to make some changes in the law of adverse

possession as due to the present law a person doing wrong thing can protect his possession as against the true owner and in the present scenario not much weight can be given to the inaction within limitation period by owner. Thus, a Division Bench of Honourable Apex Court has formed opinion that even the present law is harsh. In any case, even under present law, the defendants could not make out the case. In the case reported as **2014 (1) SCC 669 [Gurudwara Sahib V/s Gram panchayat Village Sirthala & Anr.]** it is laid down that the adverse possession plea, the plea of limitation can be used as defence. There cannot be any dispute over this proposition. It was necessary for the appellant to show that substantial question of law can be formulated and appeal can be admitted. As no such case is made out, this Court holds that it is not possible to admit the appeal.

12. In the result, the appeal stands dismissed.

13. In view of final disposal of the second appeal itself nothing further survives in the pending civil applications and both the civil applications stand disposed of

accordingly. Time of four weeks is given to the Appellant and for that period the decree of possession is not to be executed.

[T. V. NALAWADE, J.]

Dt.28/09/2015
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