

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

22. SA/364/2014 With CA/6170/2014 In SA/364/2014 With
CA/4247/2015 In SA/364/2014

MAZHAR MOHD. SAHEB AND ANOTHER
V/S
NAIMODDIN HAMIDODDIN SIDDIQUI

Mr. S.G. Ladda, Advocate for appellants.

Mr. Shoyab Shaikh, Advocate for respondent.

CORAM : T.V. NALAWADE, J.
DATED : 21st September, 2015.

ORDER :

1. The appeal is filed against the judgment and decree of R.C.S. No. 36/2012 which was pending in the Court of Civil Judge, Junior Division, Parbhani and also the judgment and order of Regular Civil Appeal No. 206/2012 which was pending in the Court of District Court, Parbhani. The suit filed by present respondent, plaintiff for relief of possession is decreed in his favour. Both the sides are heard.

2. The suit was filed in respect of one house property, which is part of Municipal House No. 147/2 (new) situated in Ward No. 9 (new), which was given old ward No. 8/15 and which is part of C.T.S. No. 326. The size of the property was given in the plaint and length and width of each side was given.

3. It is the case of plaintiff that the suit space was owned by Laxman and Dadarao Deshmukh and from them one Zainatbee had purchased the space under registered sale deed dated 15.5.1967. It is his case that said Zainatbee made construction of two rooms with W.C. on this space and then she sold this property to one Bilkis Begum under registered sale deed dated 11.6.1969. From Bilkis Begum one Khaisar Begum purchased the suit property under registered sale deed dated 11.7.1974 and from this lady, the plaintiff purchased the property on 21.9.2007 under registered sale deed.

4. It was the case of plaintiff that he was in possession and the possession was received under sale deed and subsequently, he was dispossessed by the defendants. Defendant No. 2 is the wife of defendant No. 1. Defendants had filed suit bearing R.C.S. No. 80/2008 for relief of injunction in respect of the same suit property. As the issues involved in the two suits are different, only the circumstance that such suit was filed by present defendants can be considered in the present matter in view of the nature of dispute.

5. It is the case of plaintiff that the defendants created

dispute by showing the document titled as "Hibanama", which is false document and they took possession on 6.6.2008 by using force and so, he was required to file present suit.

6. The defendants contested the matter by filing written statement. They denied that the suit property is purchased by the plaintiff. They disputed the description of the property given in the plaint by contending that description does not tally with the property purchased by the plaintiff. They took defence that Zainatbee was the grandmother of defendants and Zainatbee has executed "Hibanama" in favour of Khurshidbee, the mother of defendant No. 1 on 23.7.1982. It is contended that after Khurshidbee, the defendants became owner and so, they are in possession of the suit property.

7. Issues were framed. As the possession was claimed on the basis of title, plaintiff gave evidence to prove the ownership. Both the Courts below have held that the plaintiff is owner of the suit property and so, the decree of possession is given.

8. First time, in the present proceeding, the learned counsel for appellants, original defendants submitted that proper

issues were not framed. He submitted that the issue with regard to limitation ought to have been framed as there is evidence to show that the defendants were in possession for more than twelve years prior to the date of suit. He submitted that issue also needs to be framed on tenability of the suit as the property is not properly described by giving boundaries correctly. He also submitted that the relief of declaration ought to have been claimed and unless such issue is decided in a suit like present one, the relief of possession cannot be given.

9. This Court has gone through the material which was made available by both the sides and also the reasons given by both the Courts below. It is not disputed that Zainatbee had purchased the property under registered sale deed dated 15.5.1967. Submissions made show that Zainatbee had no other property in that area. Copies of sale deeds were shown to this Court and they show that this property was sold by Zainatbee to Bilkis Begum. Bilkis Begum had sold the property to Khaisar Begum and then plaintiff purchased the property from Khaisar Begum in the year 2007. As the property which was purchased by Zainatbee in the year 1967 was sold by her in the year 1969, there was no question of giving gift of this property by Zainatbee to anybody including her sister in the year 1982.

10. Before the trial Court, all the aforesaid sale deeds were produced and this Court has also gone through those sale deeds. It can be said that from 1967, the numbers were changed in municipal record and also number was given in city survey office. Now the property is described as portion of C.T.S. No. 326 which is bearing House No. 147 and the suit property is part of the property which is given such numbers. Both the Courts have tallied the boundaries. The learned counsel for appellants produced a chart showing description given in various sale deeds. This Court has also gone through the description and it can be said that the description sufficiently tallies. In any case, the defendants themselves were claiming that they are holding the property of Zainatbee but Zainatbee had only the suit property with her. Thus, there was no question of proper identification of the suit property.

11. The aforesaid pleadings in written statement show that no defence of limitation could have been taken. Though the contents of the some sale deeds show that from prior to the sale deed executed in favour of plaintiff, the defendants were in possession, that does not mean that their possession was adverse and there was question of limitation. When suit is filed

on the basis of title, Article 65 of the Limitation Act becomes applicable and in that case, the defendants need to take specific defence with particulars. There was no such defence and so, there was no alternative before the Courts below than to decide the matter in favour of plaintiff. This Court holds that no substantial question of law as such is involved in the present matter and on the basis of aforesaid points also, no such substantial question of law can be formulated.

12. In the result, the appeal stands dismissed. Civil applications are disposed of.

[T.V. NALAWADE, J.]

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