

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

SECOND APPEAL NO. 555 OF 2014
WITH
CIVIL APPLICATION NO. 9361 OF 2014

Zalubai w/o Dadarao Chavan
Age 51 years, occup. Household,
R/o Gut no. 98/P, New Pahadsinghpura,
Part No.1 (Plot No.1), Aurangabad
Taluka and Dist. Aurangabad

.. Appellants/
Orig. Plaintiff

versus

01. Sow. Saroj w/o Pradeep Jaiswal,
Age 50 years, occup. Household,
R/o Naralibagh, Aurangabad,
Tq. and Dist. Aurangabad
02. Raju Lekhraj Tanwani,
Age 55 years, occup. Business,
R/o Hira Fancy, near Supari Hanuman,
Mandir, Gulmandi, Aurangabad
Tq. and Dist. Aurangabad
03. Tarwingersingh s/o Mahendersingh Dhillan,
Age 60 years, occupation : business,
R/o Rely Station Road, Near Panchwati
Hotel, Padampura, Aurangabad,
Tq. and Dist. Aurangabad
04. Premchand s/o Fakirchand Mantir,
Age 59 years, occup: business,
R/o Pradeep Jaiswal Sampark Karyalaya,
Naralibagh, Aurangabad, Tq. and Dist. Aurangabad.

.. Respondents/
Ori. Defendants

Mr. Suryakant S. Pawar, Advocate for appellant
Mr. Ajeet D. Kasliwal, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
30TH NOVEMBER, 2015

ORAL JUDGMENT :

1. This second appeal is by unsuccessful plaintiff in regular civil suit no. 83 of 2007 on the file of 3rd Joint Civil Judger, Junior Division, Aurangabad, seeking perpetual injunction restraining defendants-present respondents from obstructing and interfering with her possession over plot bearing no. 1 ad-measuirng 45' x 100' (about 418.21 square metre) forming part of survey No. 98/P situated at New Pahadsinghpura, Aurangabad, which was dismissed on 31-03-2011 which dismissal was confirmed in regular civil appeal no. 173 of 2011 by District Judge-3, Aurangabad, under judgment and order dated 10-04-2014.

2. Learned counsel for the appellant Mr. Pawar vehemently submits that even going by sale deed, specially sketch map annexed to the same, it emerges that on north-east corner of the suit property- survey no. 98/P has been shown and the plaintiff has claimed possession over the same. He submits, said sale deed refers to various sub divisions of survey no. 98 and the vendors and vendees have themselves divided said gut number into part A and part B admeasuring 1 hectare and 21 guntha respectively. In the circumstances, claim of the plaintiff with regard to survey no. 98/P ought to have been considered.

3. This submission, however, is countered by learned counsel for respondents Mr. Kasliwal, stating that reference to survey no. 98/P is too vague and does not make any sense. As a matter of fact 'P' denotes 'part' as survey no. 98 is divided into various parts and it is only to avoid inconvenience, sub divisions have been referred to as parts of survey no. 98 viz 98 part or 98/P. He submits that the very sketch refers to survey no.98 being divided into various parts or divisions and, therefore, everywhere there is reference to survey no. 98(part) or 98/P and so on and since on north-east part a very small portion is left, that has no significance for, according to the plaintiff, she claims the property which falls within boundaries of the property under the registered sale deed in defendants' favour.

4. The plaintiff claims suit property to be in possession of her father since 1935 and in 1980 she had constructed two rooms over the same. Plaintiff further refers to that in the proceedings under Gunthewari Act, she had filed an affidavit and as such the property was taxed by the municipal corporation and accordingly she used to pay taxes. According to the plaintiff, the property was transferred in her name and therefore she was taxed. She had further paid non agricultural assessment of ₹ 15,000/-. She further relies on electricity connection taken by her in respect of the suit property. According to her, defendants no. 1 to 4 had purchased property to the extent of 30 Aar from said survey no. 98/P pursuant to

mutation entry no. 908 and since then they have been disturbing plaintiff's possession over suit property and as such, suit ensued.

5. Defendants in their written statement have denied the claims made by the plaintiff. They have also filed counter-claim referring to that plaintiff's possession over the suit property is permissive and that they have purchased the suit property and accordingly mutation entries have been carried out in their names and as such, they are entitled on the basis of title to possession of suit property. They have alternatively prayed for injunction against the plaintiff.

6. The trial court had after scanning evidence on record considered that plaintiff has failed to establish her possession from 1935 as claimed or, for that matter, from 2002; her defence of possession to the counterclaim filed by the defendants cannot be said to be hostile to title of the true owner or that such hostility has emerged only in 2002 onwards and the suit has been filed in 2007 and as such, defence of adverse possession is not available to the plaintiff. The trial court has also recorded that there is no documentary evidence available with the plaintiff about she being in possession of suit property for a long time before she had instituted the suit, for, her oral testimony does not espouse any confidence since the same has no basis and her testimony purportedly has been ratified by her own witness who too faltered

while under cross examination. He does not appear to know correct position to form basis of his knowledge and the same has surfaced in his cross examination.

7. The appellate court has also considered that while it is the claim of the plaintiff that her father was in possession of the suit property since 1935 onwards, there is no reference to the origin of his ownership and possession over the suit property. Her claim of bringing up two rooms over the property since 1980 has been considered by appellate court referring to that if the property was developed in 1980, tax receipts to that effect would have been produced to demonstrate that construction was pursuant to the requisite permission from the corporation. Till 2007, she had not paid any non agricultural charges. The appellate court as well, has considered that the plea of the plaintiff about she being in possession from 1980 or, for that matter, from 1995 does not find support in the evidence and all the documents which have been relied on, on behalf of the plaintiff are post 2002. The court has also taken into account that both the affidavits by plaintiff, one in examination-in-chief before remand and another after remand, do not disclose that the sale deed executed in favour of the defendants is false or it is not a genuine document. The appellate court has considered that the defendants are demanding possession of the property described by specific boundaries. Dispute about one sale deed in favour of the vendees has been considered by the appellate

court observing that plaintiff has not shown that such a document is impermissible.

8. Both the courts with reference to various judgments have considered and refused to go by defence taken up by the plaintiff about ownership by adverse possession.

9. Having regard to that the courts below have recorded concurrent findings of facts and the appellant-plaintiff not being in a position to dislodge the same by any cogent material, I do not find that second appeal raises any substantial question of law.

10. Second appeal, as such, stands dismissed. Consequently, civil application no. 9361 of 2014 does not survive is disposed of.

SUNIL P. DESHMUKH, J.

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