

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

Second Appeal No.565 of 2013

Pandhari S/o Mansaram Patil. **.. Appellant.**

Versus

Yashwant Zipru Patil
(Deceased), through legal
representatives.

.. Respondents.

Shri. Prakashsingh B. Patil, Advocate, for appellant.

Shri. V.B. Patil, Advocate, for respondent Nos. 1 to 7.

CORAM: T.V. NALAWADE, J.

DATE : 8th SEPTEMBER 2015

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.83 of 1999 which was pending in the Court of the Civil Judge, Junior Division Yawal and also the judgment and order of Regular Civil Appeal No.5/2007 which was pending in the District Court Jalgaon. The suit filed by the appellant for recovery of possession of one house property from village Adgaon is dismissed by the trial Court and this decision is confirmed by the First Appellate Court. Both sides are heard.

2) Learned counsel for the appellant submits that substantial questions of law need to be formulated as contended by him in appeal memo. He has given the grounds as points (i) to (iv) and they are as under :-

(i) Whether it has been properly correctly and legally held by both courts that, the respondent is not a tenant of the appellant merely because the appellant failed to produce the rent receipts in the court ?

(ii) Whether it has been properly, correctly and legally held by both courts that, the suit of appellant is barred by the limitation when there is specific pleading of the appellant that, the respondent has not paid the rent from 1-3-1997 ?

(iii) Whether it can be held that, the respondent has become the owner of suit house on the basis of adverse possession when he has denied the perfect title of the appellant by registered sale deed ?

(iv) Whether the possession of the defendants can be held as adverse possession without specific pleading and specific ingredients of adverse possession ?

3) This Court has gone through the judgments delivered by the Courts below and also the paper book containing evidence of the parties. It appears that the suit house was purchased from mother of original defendant, Sarubai by the father of the plaintiff in the year 1967. Possession was not taken at that time and defendant was occupying the property. It is the case of the plaintiff that the defendant continued the occupation as tenant of the father of the plaintiff and so in that capacity he is still there. It is contended that for some time the defendant paid rent, till 1997 but when he stopped making payment of rent plaintiff was constrained to take action and so he filed suit for recovery of possession.

4) The defendants filed written statement and they contested the suit. They contended that father of defendants was never tenant of the father of the plaintiff. They denied that sale deed was executed by mother of original defendant in favour of the father of the plaintiff. They contended that they are owners of the suit property as property was purchased by mother of the original defendant way back in 1956 and since then they are in

possession. Alternatively they contended that even if sale deed is there, they continued their possession and their possession was adverse and that was for more than prescribed period and so the suit is not within limitation.

5) In view of the evidence, the Courts below have drawn inference that the plaintiff has failed to prove that it was permissive possession. Finding is given that possession was of adverse nature. Though the trial Court did not specifically mention Article 65 of the Limitation Act, the trial Court decided the issue of ownership by adverse possession of defendants in favour of the defendants. First appellate Court specifically considered the point of limitation and this point is answered against the plaintiff. The findings of the Courts below on this point involve questions of fact also. As the findings are concurrent, this Court holds that no substantial question of law can be formulated as contended by the plaintiff, appellant. In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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