

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 216 OF 2015
WITH
CIVIL APPLICATION NO. 6616 OF 2015

Sow. Ujwala w/o Gautam Kamble,
Age: 41 years, Occu. Household,
R/o Plot No. 48, Gut No. 130,
Mouje Waghala, Mun.House No. 22.204/1,
Tq. Dist. Nanded

...APPELLANT
(Orig. Defendant)

VERSUS

1) Gunwant s/o Govindrao Nagargoje,
Age: 46 years, Occu. Service,
R/o Barbada, Tq. Biloli,
Dist. Nanded

...RESPONDENT
(Orig. Plaintiff)

2) Uttam s/o Dharmaji Sonkamble,
Age: Major, Occu. Private Job,
R/o Rahulnagar, Near Homeopathic College,
Nanded, Tq. Dist. Nanded

...RESPONDENT 2
(Orig. defendant No.2)

Mrs Ranjana D. Reddy, Advocate for appellant;
Mr V. D. Patnoorkar, Advocate for respondent No. 1

CORAM : N.W. SAMBRE, J.

DATE : 22nd June, 2015

ORAL ORDER

Heard Smt. Reddy, learned Counsel appearing on behalf of the
appellant and Mr Patnoorkar, learned Counsel on behalf of respondent
no.1 – caveator.

2. The present Second Appeal is by original defendant. Respondent no.1/plaintiff, based on sale deed dated 17th November, 1995 (Exh.27), filed a suit for recovery of possession with a prayer for declaration. One Kachru Ghogre, who was owner of the property has executed above referred sale deed in favour of respondent no.1/plaintiff.

3. The present appellant also holds a title to the said property by virtue of Exh.32 – registered sale deed dated 31st January, 1999, executed by Kachru in favour of the appellant. Based on the above referred sale deed Exh.32, the appellant raised a defence of title to the property.

4. The suit for possession came to be registered as Regular Civil Suit No.449 of 2006. The learned Trial Court, upon considering the rival claims, framed the issues and answered the same as under :-

Sr.No.	ISSUES	FINDINGS
1	Does plaintiff prove his ownership over the suit plot, as alleged ?	Yes
2	Does he further prove that his vendor had delivered possession of suit plot to him ?	Yes
3	Does the plaintiff further prove that defendant No.1 has acquired illegal possession over the suit plot as is alleged ?	Yes
4	Does the defendant No.1 prove that he is lawful owner and possessor of suit plot ?	No
4A	Whether the suit is bad for non-joinder of necessary party ?	No
5	Is the suit properly valued ?	Yes
6	Is the plaintiff entitled for relief of	Yes

	declaration, as claimed ?	
7	Is the plaintiff further entitled for relief of recovery of possession, as claimed ?	Yes
8	What order and decree ?	Suit is decreed as per final order

5. In support of his claim, respondent no.1/plaintiff examined himself at Exh.22 (P.W.1), attesting witness Venkati at Exh.26 (P.W.2) and adjoining plot owner Mahadu (P.W.3) at Exh.31. Apart therefrom, he has relied upon the recitals of the sale deed Exh.27 executed by Kachru in his favour and also sale deed Exh.32 executed by Kachru in favour of the appellant/defendant, so as to demonstrate that P.W.3 Mahadu, who was examined at Exh.31, was adjoining plot owner.

6. The appellant/defendant examined herself at Exh.36, attesting witnesses D.W.2 Maroti at Exh.52 and D.W.3 Dhondiba Exh.55. She has also relied upon the sale deed Exh.53 executed by deceased Kachru in her favour, tax notice Exh.40 issued by the Municipal Corporation and tax receipts Exhs.41 to 47.

7. Based on the above referred evidence, the Trial Court decreed the suit of present respondent no.1, thereby ordering the present appellant to deliver the vacant possession of the suit plot to respondent no.1/plaintiff within a period of three months. The suit property consists of a small plot bearing No.48, situated in Gat No.130 of village Waghala Tahsil and

District Nanded, ad measuring south-north 40 ft. and east-west 30 ft., having boundaries on east – plot no.48; on west – plot no.47, on south – plot no.57 and on north – road.

8. The learned Trial Court, based on the oral as well as documentary evidence brought on record by the plaintiff, has decreed the suit.

9. What prevailed upon the learned Trial Court before passing the decree in question was that the earlier owner Kachru had already executed the sale deed Exh.27 in favour of respondent no.1/plaintiff and had also passed on possession of the suit property. The learned Trial Court, having regard to the provisions of sections 3 and 7 of the Transfer of Property Act, has decreed the suit. The Trial Court noticed that the appellant/defendant has purchased the property in question without inquiring into the title of Kachru to the suit property.

10. Regular Civil Appeal No.87 of 2007 preferred by the appellant came to be dismissed by the Principal District Judge, Nanded by judgment and decree dated 3rd August, 2013. Thus, the present Second Appeal.

11. While dismissing the first appeal, the lower appellate court has, in detail gone into the contents of both the sale deeds, i.e. Exh.27 and Exh.32, so also the title of Kachru to the suit property. The lower

appellate court has evaluated the evidence of each of the witnesses including that of defendant's witnesses D.W.2 Maroti Kamble and D.W.3 Dhondiba Ghogre on the aspect of sale deed at Exh.53. The fact about purchase of the property by the present appellant without inquiring into the title is very much established, which is apparent from the appreciation of the evidence by the lower appellate court.

12. With the above referred background of findings recorded by both the Courts below, Smt. Reddy, learned Counsel appearing on behalf of the appellant would urge that both the Courts below have given findings contrary to the record. According to her, the suit instituted by the present appellant suffers from non-joinder of necessary party as neither earlier land owner nor his legal heirs were brought on record. Apart from this, she would further urge that the suit was filed at belated stage and is barred by limitation.

13. Upon analyzing the submissions made by the learned Counsel appearing on behalf of the appellant, *prima facie* it is noticed that both these issues were not at all canvassed before the lower appellate court. Be that as it may, whether the earlier land owner was a necessary party to the present proceedings, if evaluated based on the evidence brought on record, in my opinion, the appellant, so also the respondent have tried to establish their title to the suit property by virtue of registered sale deeds at

Exhs.27 and 32, executed in their favour. So as to establish their title to the suit property, they have examined the attesting witnesses. The learned Courts below, while considering the title of the present respondent to the suit property have noticed and given finding that the appellant herein who has purchased the property vide Exh.32 in 1999, i.e. later in point of time than that of title vested in the respondent, without inquiring into the title.

14. In view of above, once both the parties have tried to establish their title to the suit property by virtue of sale deed executed by Kachru, in my opinion, both of them were claiming title from Kachru. As such, it is not open for the present appellant to contend that Kachru should have been impleaded as necessary party to the present proceedings. Apart from above, the claim of the present appellant that the suit filed after the death of Kachru is barred by limitation is concerned, it is required to be noted that the cause for filing the suit to the present respondent no.1 arose only after Kachru transferred the title of the suit property in favour of the present appellant/defendant.

15. In my opinion, the suit was well within limitation as no statutory violation under the Limitation Act is established.

(7)

sa216.15.

16. In view of the foregoing discussion, the Second Appeal against concurrent findings fails and stands dismissed with no order as to costs.

17. In view of dismissal of Second Appeal, Civil Application No.6616 of 2015 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj