

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 139 OF 2015
WITH CA/1750/2015 IN SA/139/2015

VILAS KHANDU DIGHE LRS HIRABAI AND OTHERS
VERSUS
MEERABAI HARIBHAU ALHAT AND OTHERS

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Advocate for Appellants : Shri Pawar P.S.
Advocate for Respondent 1 : Shri Bora S.S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 30, 2015

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PER COURT :-

1. I have heard Shri Pawar, learned Advocate for the appellants and Shri Bora, learned Advocate for respondent No.1, for quite sometime.

2. The appellant - Vilas Khandu Dighe is the original defendant No.1. RCS No.6 of 2005 was filed by the plaintiff - respondent No.1 herein - Meerabai Haribhau Alhat, claiming possession over the suit property. The appellant had earlier filed RCS No.270 of 1998 against the original plaintiff claiming injunction and declaration of ownership by adverse possession. The said suit has been dismissed by the trial Court, by order dated 15.9.2000. The appellant carried RCA No. 308 of 2000, which was partly allowed to the extent of restraining the defendants from dispossessing the plaintiff from the ground floor in the suit property, without following the due process of law.

3. Issues were cast by the trial Court in RCS No.6 of 2005. The

grievance of the appellant is that though the appellant claimed a right in the property by adverse possession, the original plaintiff Meerabai had claimed that the appellant was a tenant and no issue of tenancy was framed, which ultimately, would have led to an issue as to whether the suit was maintainable before the trial Court.

4. After considering the submissions of the learned Advocates, who have taken me through the appeal memo and the annexures, I find that it was never the case of the appellant that he was a tenant. There was no request in the Written Statement that the issue of tenancy be framed. The trial Court has admittedly not framed the issue and which appears to have been given up by the plaintiff. The trial in the suit, did not take into account any aspect of tenancy. The appellant, therefore, for the sake of arguments, since the judgment of the trial Court has gone against them, has now raised a plea in the Second Appeal that a particular issue was not framed and more so, when the said aspect was for the plaintiff to prove.

5. By the judgment and order dated 6.9.2011, the trial Court has decreed the suit.

6. The appellants preferred RCA No.373 of 2011. It is noteworthy that the counter claim filed by the appellants was rejected by the trial Court since the plea of adverse possession taken up by the appellants had already been negated by the judgment of the trial Court in RCS No.270 of 1998.

7. I can gather from the grounds raised by the appellants before the appeal Court that the aspect of non-framing of an issue as regards the jurisdiction of the trial Court, purportedly on the basis of the tenancy aspect, has not been raised by the appellants. As such, the appeal Court was required only to consider the claim of the appellants in the light of the rejection of their counter claim, which had put forth the case of ownership based on adverse possession. Naturally, the appeal was dismissed on 13.12.2013 on the ground that once the claim for ownership on the basis of adverse possession was concurrently negated by the trial Court in RCS No.270 of 1998 and by the Appeal Court in RCA No.308 of 2000, there could not have been a re-adjudication of the said issue.

8. In the light of the above, I do not find that any substantial question of law requiring adjudication by this Court emerges from the proceedings. The Second Appeal is, therefore, dismissed.

9. The Civil Application, as such, does not survive and accordingly stands disposed off.

(RAVINDRA V. GHUGE, J.)

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