

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 23 OF 2014

Mr. Damacino Uriel Rajendra Rebello,
Alias Mr. Rajendra Rebello,
Aged 72 years, Son of late
Baldomero Rebello,
Resident of H. No.38,
Velcao Goa and anr. Appellants

V e r s u s

1. Mr. Victor Francisco Fernandes,
Major of age (not known)
Son of late Amaldo Francisco
Triburcio
2. Mrs. Blanca Januaria Fernandes,
Major of age (not known)
Wife of Mr. Victor Francisco
Fernandes and 20 others. Respondents

CORAM: N. M. JAMDAR, J.

DATE: 11TH FEBRUARY, 2015.

Mr. G. Agni, Advocate for the Appellants.

Mr. S. R. Rivankar, Advocate for the Respondents.

ORAL ORDER:

By this second appeal, the appellants challenge the judgment and order passed by the District Judge-1, Margao dismissing the appeal filed against the judgment and decree passed by the Civil Judge Junior Division, Margao. The Civil Judge by the impugned judgment and decree declared that the respondents-plaintiffs are the owners of the properties and that the names of the respondents-plaintiffs be entered in the occupant's column.

2. A suit was filed by the respondents in respect to a property situated at village Gandaulim, Colva, Salcete, Goa. According to the appellants, the suit properties were gifted to them by the owner Emerciana Conceicao Pereira sometime in the year 1939. According to the respondents, father of the appellants was looking after the properties, however, in the year 2007, the father of the appellants entered his name in the revenue records. The respondents accordingly filed a suit for declaration, as aforesaid.

3. A written statement was filed by the appellants-defendants no.9 and 10. The appellants contended that they are in enjoyment of the property for the last 50 years and they have acquired title by adverse possession. The contentions raised in the plaint were denied. Both the trial Court and the appellate Court after consideration of the evidence found that the respondents proved their title by virtue of the Gift Deed and theory of adverse possession set up by the appellants could not be accepted. The learned Civil Judge accordingly

decreed the suit by judgment and decree dated 30 July, 2012. The appeal filed by the appellants to the District Court, Margao was dismissed by the judgment and order dated 29 October 2013.

4. As regards the title of the respondents to the property, both the Courts have held that they are the owners of the property by virtue of the Gift deed. No fault can be found with this conclusion. Nothing contrary is shown as to why the respondents should not to be considered as owners of the property by virtue of the Gift Deed. The only argument that has been made on behalf of the appellants is that they have become owners by virtue of adverse possession.

5. The plea of adverse possession is basically one of fact. There has to be adequate pleadings in that regard. In the written statement there are only few sentences stating that they are in peacefully possession for the last 50 years and that the appellants acquired title by adverse possession.

6. Mr. Gaurish Agni, learned counsel for the appellants submitted that the father of the appellants was plucking fruits from the suit property since long time and thereafter, the appellant were also doing the same, to which the respondents never objected. He submitted that a suit was also filed by the appellants to evict a trespasser and the respondents never objected to all these activities of the appellants. Question is whether that would be sufficient for setting up a title by adverse possession. It is settled law that

mere permissive possession will not result into an adverse possession by passage of time. There must be acts done by the person claiming adverse possession hostile to the original owner. Merely because the owner has not taken any steps it does not automatically mean that the continuance of the occupant becomes hostile.

7. Mr. S. R. Rivankar, learned counsel for the respondents has pointed out that the other brothers of the appellants admitted that father of the appellants was asked to look after the property by the respondents. Both the Courts have rightly relied upon the law laid down by the Apex Court in respect of examining the claim of adverse possession. None of the facts even if proved will constitute possession hostile to the original owners. The original owners were residing abroad. The fact that they did not object to the appellants to plucking the fruits from the property does not mean that the appellants can claim ownership of the same. As soon as the respondents noticed that the name of the appellants was entered into the revenue record, they filed the present suit.

8. In the circumstances, no perversity is found in the decisions of the Courts below. No substantial question of law arises. The appeal is accordingly dismissed.

N. M. JAMDAR, J.

AP/-