

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.660 OF 2013

(Kusum Yeshwant Sapkal and others Vs. Krishna Dadu Sapkal)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.

Court's or Judge's orders.

Shri V.S. Talkute i/b G.S. Rajaram, Advocate for Appellant.
None for Respondent.

CORAM: R.K. DESHPANDE, J.

DATE: 28th JULY, 2015.

The trial Court passed a decree in Regular Civil Suit No.497 of 1986 on 18.08.2006 holding the plaintiff to be the owner of the suit property and the defendants are directed to handover the possession of the suit property i.e. land Gat No.295 and house property bearing Gram Panchayat No.222, Ward No.3 fully prescribed in the plaint. Regular Civil Appeal No.68 of 2006 has been dismissed by the Lower Appellate Court on 08.08.2013. The defendant is before this Court in the Second Appeal.

The Courts below have held that the plaintiff has established his right over the suit property on the basis of the registered sale-deed dated 09.12.1927 at Exh.42 executed by Gojabai in favour of Dadu who was the father of the plaintiff. The Courts have held that in the revenue records entries were made on 03.07.1928 and were certified on 15.03.1929 at Exh.11. The father

of the plaintiff was shown to be the owner and in possession of the suit property till the year 1971 when Gojabai died on 19.01.1971.

The case of defendant was that in consolidation proceeding instituted prior to the death of Gojabai, the possession of the property was handed over to them and the entries in the revenue record indicated their names. A plea was also raised of the adverse possession by the defendants. The defendants claimed that Gojabai was in possession of the suit land on the basis of Vyavastapatra dated 09.12.1927 for maintenance. On the date of coming into force of Hindu Succession Act, 1956 she became absolute owner of the property and the plaintiffs have derived the possession from her over the suit property. All these contentions are rejected by the courts below.

The learned counsel for the appellant has urged that the courts below have failed to consider the claim of absolute ownership of Gojabai by virtue of Section 14(1) of the Hindu Succession Act, on the basis of Vyavastapatra dated 09.12.1927. Both the Courts below have not discussed this aspect. It is therefore, apparent that the point was not raised before the Courts below. Even assuming that the Gojabai becomes the absolute owner by virtue of Section 14(1) of the Hindu Succession Act the defendants would not become

absolute owner of the entire suit property. Be that as it may, the Courts have recorded the categorical finding that Gojabai was never put in possession of the suit property and therefore, applicability of Section 14(1) of the Hindu Succession Act is ruled out. The plea of adverse possession has not been established by the plaintiffs. Thus, no substantial question of law is involved in this second appeal. The second appeal is dismissed.

In view of dismissal of the Second Appeal, Civil Application No.1579 of 2013 does not survive and it accordingly stands disposed of.

JUDGE