

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.588 OF 1992

Shri. Bhikchand Ratanchand Dugad Appellants
(deceased) through his heirs
1-A) Fulchand Bhikchand Dugad & Ors.

Vs.

Shri. Bhagchand Kesharmal Picha Respondents
(since deceased through his legal heirs
1A) Suvabai Bhagchand Picha & Ors.

Mr. Rahul Motkari, Advocate for the Appellants.
Mr. A.R.S. Baxi, Advocate for respondents no. 1A to 1E.
Mr. Ashok Tajane, Advocate for respondents no.3A to 3D.

Coram : Smt. R.P. SondurBaldota, J.

Date : 22nd January, 2015

P.C.

1 This Second Appeal is directed against the judgment and order dtd. 19th February, 1992, by which the lower appellate court allowed the appeal preferred by the respondents and dismissed the suit filed by the appellant.

2 The brief statement of facts giving rise to the dispute between the parties is as follows:

The predecessor of the appellants, the original plaintiff filed suit for declaration that he is the owner of the suit property and that the resolution passed by Zilla Parishad to mutate it's record for showing original defendant no.2 as the owner was illegal and to restrain Zilla Parishad from mutating the name of original defendant no.2 by deleting the name of the original plaintiff from it's records. The trial court decreed the suit with a finding that the original plaintiff is the owner of the suit property and that the vendor of original defendant no.2 had no right to dispose off the property in favour of original defendant no.2. Consequently, the resolution passed by the Zilla Parishad was not correct.

3 The original plaintiff had earlier filed Regular Civil Suit No.240 of 1957 against one Harakchand, the vendor of original defendant no.2 and his brother Swarupchand for declaration of title and possession. The trial court dismissed the suit holding that it was barred by Law of Limitation. The appeal bearing Civil Appeal No.218 of 1959 preferred by the original plaintiff was also dismissed with a specific finding that the title of the original plaintiff had extinguished on account of the open and hostile possession of the vendor of original defendant no.2 and also by original defendant no.2 for more than 12 years. The order in the appeal was carried to this court by filing Second Appeal No.1323 of 1960, which has confirmed the order of the courts below. The orders in three proceedings have been produced in

evidence. The orders of the lower appellate court and of this court have been marked at Exhibits 27 and 28 respectively. Despite this clear findings, the original plaintiff, once again in the year 1983 filed suit for establishing his title to the suit property and also a right relating thereto. The trial court, in it's judgment and decree dtd. 2nd December, 1986 decreed the suit holding that in the proceedings filed earlier, the title of the original plaintiff stood established and what was denied to the original plaintiff was only possession of the suit premises on the ground that the right to recover possession was barred by Law of Limitation. Obviously, these observations in the trial court decision are the outcome of misreading of the judgment of the District Court in Civil Appeal No. 218 of 1959. When the judgment of the trial court was carried in appeal by way of Civil Appeal No. 267 of 1987, the lower appellate court after reading the judgment, Exhibits 27 and 28 held that the right or title of the original plaintiff was extinguished by adverse possession of the vendor of original defendant no.2. Thereafter, in the year 1968, he sold the suit property to original defendant no.2. Perusal of the judgment at Exhibits 27 and 28 clearly justifies the findings of the lower appellate court. Hence, there is no infirmity in the finding of the lower appellate court. Also there is no substantial question of law arising for consideration of this court. Hence, the Second Appeal is dismissed.

(Smt. R.P. SondurBaldota, J.)