

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

**SECOND APPEAL NO. 708 OF 1992
WITH
CROSS OBJECTION (ST) NO.16176 OF 1993**

Prataprao Bhimrao Patil

Appellant

Vs

1. Hirabai Laxman Mane, since
deceased, by her heirs and legal
representatives
A. Janardan Laxman Mane and
Ors.

.. Respondents

Mr. A.M.Kulkarni with Mr. Sarthak Diwan, Advocate for Appellant.

Mr. S.G.Deshmukh, Advocate for Respondents.

CORAM : R.G.KETKAR,J.

DATE : 23rd & 24th March, 2015.

ORAL JUDGMENT:

1. Heard Mr.A.M.Kulkarni, learned counsel for the appellant and Mr. S.G.Deshmukh, learned counsel for the respondents at length.

2. By this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'C.P.C'), the original plaintiff has challenged the Judgment and decree dated 14.8.1992 passed by the learned Addl. District Judge, Sangli in Regular Civil Appeal No.301 of 1985. By that order, the learned District Judge partly allowed the Appeal filed by the appellant and quashed and set

aside the Judgment and decree dated 30.7.1985 passed by the learned Civil Judge, Jr.Dn., Vita in Regular Civil Suit No.91 of 1974 in respect of properties No.II and III which are marked in the map of Court Commissioner (Exhibit 65-A) by letters "E-F-G-H" and "I-J-K-L". The learned District Judge decreed the suit in respect of these two properties and held that the appellant, hereinafter referred to as 'plaintiff', is entitled to recover possession of suit properties no.II and III from the respondents, hereinafter referred to as 'defendants'. The plaintiff would be entitled to recover future mesne profits under Order XX Rule 12(c) of C.P.C. Appeal was partly dismissed and the decree passed by the trial Court as regards suit property no.I was maintained. The defendants', have filed Cross Objection against the District Court's Judgment and decree in so far as directing them to hand over possession of the properties at Sr.Nos.II and III in paragraph 1 of the Plaint. The appellant, hereinafter referred to as 'plaintiff' instituted the suit for recovery of possession of :

I. House in about 1 Guntha of NA plot from R.S.No.295/1-G i.e. house no.223-admeasuring 4 khans. At present M.H.No.391/1.

II. Half Guntha open space on southern side from R.S. No.295/1-E to the East of property no.1. At present S.No.295/B/1-E.

III. Open space - Pardi land about 17x 59 - with one latrine.

One passage in between property no.1 and 2 is an

access to the property no.3. At present S.No.295 B/1-C;

(for short, 'suit properties'). The learned trial Judge dismissed the suit on 30.7.1985. Appeal preferred by the plaintiff was partly allowed. It is against this decision, the plaintiff has preferred Second Appeal and the defendants have preferred Cross Objection. The relevant and material facts, giving rise to filing of the Second Appeal, briefly stated, are as follows:

3. It is the case of the plaintiff that the suit properties were owned by one Gangaram Tatyaji Jadhav. His mother-in-law Putlabai Jyotiram Bhosale had instituted suit, namely, Civil Suit No. 196 of 1946 against Gangaram in respect of suit property no.1, among other properties. It appears that suit was partly decreed in respect of two khans, out of suit property No.1. Aggrieved by that decision, Putlabai preferred Civil Appeal No.523 of 1949. The parties thereto entered into compromise on 22.1.1951. Under the compromise, Putlabai was given life time interest in respect of two khans on the eastern part of suit property no.1. On 19.2.1951, Gangaram executed sale deed in favour of Bhimrao, i.e. the plaintiff's father. It is on the basis of this sale deed, the plaintiff claimed that he is owner of the suit properties and accordingly filed the suit for recovery of possession.

4. The defendant resisted the suit by filing written statement,

inter alia, contending that neither the plaintiff nor his father have any right, title and interest in the suit properties. They were never in possession of the suit properties. It was further contended that the suit properties are owned by Putlabai. She had inducted tenants and was recovering rent from tenants. She was also paying municipal taxes as also government taxes. As Putnabai did not have any son and she was aged, in order to manage the suit properties, she had executed nominal Gift Deed in favour of Gangaram in the year 1936. On the basis of that Gift Deed, Putlabai was not divested of her title as also she never lost possession. Even after execution of the Gift Deed, possession of Putlabai was continuous adverse to Gangaram till her death. Putlabai did not allow Gangaram to enter the suit properties even after execution of the Gift Deed. Gangaram died in the year 1958. On the basis of the Gift Deed, Gangram did not get possession and consequently he did not derive any right thereunder. As Gangaram was not having any right, title and interest in the suit properties and also he was not in possession, the plaintiff's father did not get any right on the basis of the Sale Deed dated 19.2.1951.

5. The defendants further contended that during her life time, Putlabai disputed and denied rights of Gangaram on the basis of the Gift Deed. In fact, because of the disputes and differences between them, Putlabai instituted the suit against Gangaram. In

that suit, the suit properties at Sr.Nos II and III were not included. Those properties continued to be in possession of Putlabai. The properties purchased by the plaintiff were in possession of Putlabai during her life time. After her death, the defendant is in possession of the suit properties adverse to the interest of the plaintiff's predecessor-in-title as also of the plaintiff. They are openly and in continuous possession of the suit properties No.I to III for more than 12 year and accordingly Putlabai and the defendant have become owners by adverse possession.

6. On the basis of the pleadings of the parties, the learned trial Judge framed the necessary issues. Parties led evidence. After considering the evidence on record, the learned trial Judge dismissed the suit. Aggrieved by that decision, the plaintiff preferred Appeal which was partly allowed as indicated herein above. It is against this decision, the plaintiff preferred above Second Appeal. Second Appeal was admitted on 27.11.1992 as grounds no.5 and 6 raised substantial questions of law. Grounds no.(5) and (6) read as under.

“(5) Whether the respondents have become owners of the suit property No.1 by adverse possession when the predecessors in title of the respondents were put in possession of this property under a compromise decree and therefore can it be said that the alleged possession of the respondents predecessors in title was hostile to the

appellant?

(6) Whether the respondents became owners of the suit property no.1 by way of adverse possession in view of the fact that it is apparent that this possession was not without any interruption or obstruction on the part of the predecessors in title of the appellant as the evidence shows that he tried to execute the decree obtained by Gangaram?"

7. The defendants have also filed Cross Objections against the impugned order in so far as directing them to hand over possession of the suit properties No. II and III in paragraph 1 of the Plaint.

8. In support of this Appeal, Mr. Kulkarni submitted that in Civil Suit No.196 of 1946 instituted by Putalabai, she came with the case that on 14.10.1936 a registered Gift Deed was executed by her in favour of Gangaram. The said suit was partly decreed in respect of two Khans out of suit property no.I. Aggrieved by that decision, Putalabai preferred Civil Appeal No.523 of 1949. In that Appeal, the parties entered into compromise on 22.1.1951. Under the compromise decree, Putalabai was given life time interest in respect of two Khans on the eastern side of suit property no.I. He submitted that Putalabai did not dispute execution of the registered Gift Deed dated 14.10.1936 in favour of Gangaram. In fact, she impliedly accepted ownership of

Gangaram over the suit property.

9. Mr. Kulkarni further submitted that though in the Written Statement filed in the present suit, the defendants disputed ownership of Gangaram, D.W. 1 Shivaji Laxman Mane examined at Exhibit-76, admitted in paragraph 7 of his cross examination that Putalabai gifted away the entire Wada including the suit property in favour of Gangaram. He, therefore, submitted that Gangaram became owner of the suit property on the basis of the registered Gift Deed dated 14.10.1936. After compromising Civil Suit no.523 of 1949 instituted by Putalabai on 22.1.1951, he executed sale deed on 19.2.1951 in favour of the plaintiff's father. The plaintiff's father expired. After his death, the plaintiff became owner of the suit properties. He submitted that the learned District Judge rightly held that on the basis of the Gift Deed, Gangaram became owner and Gangaram, in turn, sold the suit properties to the plaintiff's father.

10. As far as the plea of adverse possession qua the suit property no. I is concerned, he submitted that the learned District Judge erroneously held that Putalabai became owner by adverse possession and that after her death, the defendants became owners of the suit property no.I. He submitted that the defendants did not set up the requisite ingredients of adverse possession. In support of his submission, he relied upon the decision of the Apex Court in the case of P.T.Munichikkanna

Reddy Vs. Revamma, (2007) 6 Supreme Court Cases 59. He submitted that a person setting up a claim of title by adverse possession is required to specifically plead and prove the ingredients of adverse possession. The burden of proof is heavy on the person claiming title by adverse possession. Such person has to be in peaceful, open, continuous and exclusive possession of the suit property for a period of more than 12 years. He has also to prove animus possidendi, i.e. to hold and possess the property to the exclusion of the true owner. Such possession must be adverse to the true owner, must be to the knowledge of true owner and must show an intention of hostility, i.e. an intention of adverse possession to possess the property hostile to the ownership rights of the true owner. Person in permissive possession cannot claim title hostile to the owner unless he first surrenders the possession and re-enters in possession of the property claiming hostile title. In support of this proposition he relied upon the decision of this Court in the case of Shyamalal Biharilal Pandey Vs. Reliance Infracstructure Ltd, 2009(2) Mh.L.J.204. He submitted that under the consent decree, Putalabai was given two Khans from eastern side of the suit property no.I during her life time. She was, therefore, in permissive possession of that portion. He, therefore, submitted that Appeal requires to be allowed, thereby, decreeing the suit in its entirety.

11. On the other hand, Mr. Deshmukh submitted that the learned District Judge rightly dismissed the suit, qua suit property no.I. However, the learned District Judge committed error in decreeing the suit and directing the defendants to hand over possession of suit properties no.II and III. He submitted that Gangaram failed to establish his ownership on the basis of the so-called Gift Deed dated 14.10.1936. The said Gift Deed was not produced in the Courts below. He submitted that initial burden lies on Gangaram to prove his title and possession and since the plaintiff claims to have purchased the suit properties from Gangaram, the said burden is on the plaintiff to prove his title and possession. It is only after discharging burden by the plaintiff, onus is shifted to defendant to prove title by adverse possession. In the present case, the title of Gangaram is not established. Consequently, the plaintiff's father did not acquire any right in the suit properties. In any case, he submitted that the Gift Deed was not acted upon. The defendant has raised two-fold defence firstly, Putalabai is owner of the suit properties and Gift Deed executed by her in favour of Gangaram was nominal and secondly, the Gift Deed was not acted upon and Putlabai continued in possession of the suit properties adverse to interest of Gangaram. In support of his submissions, he relied upon the decision of the Apex Court in the case of P.T.Munichikkanna Reddy (supra).

12. I have considered the rival submissions made by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, the plaintiff claims ownership on the basis of the sale deed dated 19.2.1951 executed by Gangaram in favour of the plaintiff's father Bhimrao. Gangaram, in turn, claims that the suit property was gifted by Putalabai to him by registered Gift Deed dated 14.10.1936. As noted earlier, Putalabai had instituted Civil Suit No.194 of 1946 against Gangaram. In that suit, the plaintiff Putlabai asserted that she had executed registered Gift Deed in favour of Gangaram on 14.10.1936. Perusal of the sale deed executed by Gangaram on 19.2.1951 in favour of Bhimrao, father of the plaintiff, also shows that in the recitals, reference is made to Gangaram acquiring ownership on the basis of Gift Deed as also proceedings instituted by and between Putalabai and Gangaram. That apart, in paragraph 7 of cross examination, DW 1 Shivaji Mane who was examined at Exh.76 admitted that Putalabai gifted away the entire Wada including the suit property in favour of Gangaram. Relevant portion of his cross examination reads as follows:

“It is true that Putalabai had gifted away the entire Wada including the suit property in favour of Gangaram Jadhav.”

13. The learned District Judge has considered this aspect in paragraphs 10 to 13 and held that Gangaram was owner of the

suit properties No.I to III and that Putlabai also admitted title of Gangaram in respect thereof. The learned District Judge, therefore, held that there was no substantial reason to dislodge the plaintiff's contention that Gangaram was owner of the suit properties no.I, II and III. In paragraph 14, the learned District Judge also considered contention advanced on behalf of the defendants that Gangaram got the Gift Deed executed by deceiving Putalabai. The learned District Judge observed that there was no iota of evidence to hold that gift deed was fraudulently obtained by Gangaram. After considering the material on record, I do not find that the learned District Judge committed any error in holding that the plaintiff established his title over the suit properties. I, therefore, do not find that the learned District Judge committed any error in reaching that conclusion.

14. That brings me to the finding recorded by the learned District Judge as regards adverse possession of Putalabai and after her death defendants over two Khans of eastern portion of the suit property no.I. This aspect was considered by the learned District Judge in paragraph 16. The learned District Judge considered Regular Darkhast No.224 of 1953 (Exh.82) filed by Bhimrao for execution of compromise decree dated 22.1.1951 as also Regular Darkhast no.94 of 1952 (Ex.151) for execution of compromise decree. The learned District Judge observed that

the deceased Putalabai did not recognise title of the plaintiff's father in the year 1952 and, therefore, she refused to surrender possession in terms of compromise decree. Conduct of Putalabai was clear indication of her hostile intention. In my opinion, the learned District Judge committed serious error in arriving at that conclusion. It is worth to note that under the compromise decree dated 22.1.1951, Putalabai was given two Khans on the eastern side of suit property no.I. She was allowed to enjoy this property during her life time. It has come on record that Putalabai died on 19.2.1972. In other words, during the life time of Putalabai, Bhimrao could not have filed Darkhast for execution of the compromise decree. To say the least, the execution proceedings filed in 1952 and 1953 were pre mature. It also appears from paragraph 16 of the District Court Judgment that during the pendency of Regular Darkhast no.224 of 1953, Putlabai expired and decree holder failed to take steps for bringing her legal representatives on record. As far as Regular Darkhast no.94/1952 is concerned, that was disposed of as Bhimrao failed to produce certified copy of the decree. In other words, both Darkhast were not dismissed on the technical grounds and not on merits.

15. Apart from that, the defendants came with the case of acquiring title by way of adverse possession. Perusal of the written statement filed by the defendants and in particular paragraph 4 thereof, clearly shows that the defendants did not

plead the requisite ingredients for setting up a claim of title by adverse possession. In the case of P.T.Munichikkanna Reddy (supra), the Apex Court observed in paragraphs 5,6, 8 and 9 as under :

“5. Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession. It follows that sound qualities of a typical adverse possession lie in it being open, continuous and hostile. [See *Downing v. Bird* 100 So. 2d 57 (Fla. 1958), *Arkansas Commemorative Commission v. City of Little Rock* 227 Ark. 1085; *Monnot v. Murphy*; *City of Rock Springs v. Sturm*)

6. Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through effluxion of time. As against rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or color of title. (See *American Jurisprudence*, Vol. 3, 2d, Page 81). It is important to keep in mind while studying the American notion of Adverse Possession, especially in the backdrop of Limitation Statutes, that the intention to dispossess can not be given a complete go by. Simple application of Limitation shall not be enough by itself for the success of an adverse possession claim.

8. Therefore, to assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially "*willful neglect*" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.
2. Specific Positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as intent to dispossess is an express statement of urgency and intention in the upkeep of the property.
9. It is interesting to see the development of adverse possession law in the backdrop of the status of Right to Property in the 21st Century. The aspect of stronger Property Rights Regime in general, coupled with efficient legal regimes furthering the Rule of Law argument, has redefined the thresholds in adverse possession law not just in India but also by the Strasbourg Court. Growth of Human Rights jurisprudence in recent times has also palpably affected the developments in this regard."
16. In paragraph 16, the Apex Court referred to its decision in *Thakur Kishan Singh Vs. Arvind Kumar* (1994) 6 SCC 501 and quoted paragraph 5 thereof which is to the following effect.

"5. As regards adverse possession, it was not disputed even by the trial court that the appellant entered into possession over the land in dispute under a licence from the respondent for purposes of brick-kiln. The possession thus initially being permissive, the burden was heavy on the appellant to establish that it became adverse. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissible possession into adverse possession. Apart from it, the Appellate Court has gone into detail and after considering the evidence on record found it as a fact that the possession of the appellant

was not adverse. “

17. In paragraph 33, the Apex Court referred to its earlier decision in Karnataka Wakf Board Vs. Govt. Of India, (2004) 10 SCC 779 and reproduced paragraph 12 thereof which reads thus:

“12. A plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. In P Periasami V P. Periaithambi, (1995) 6 SCC 523, this Court ruled that

'Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property.'

18. Perusal of the above extracted portions shows that when the defendant takes plea of adverse possession, inherent in the plea is that someone else was the owner of the property. In the present case, Putalabai denied ownership of Gangaram as also that of plaintiff's father Bhimrao and the plaintiff. The defendants contended that Putalabai was all along owner of the suit properties even after execution of nominal Gift deed. After death of Putalabai the defendants became owners. In other words, the defendants did not accept ownership of either Gangaram or Bhimrao and/or plaintiff. In view of the decision of the Apex Court in the case of P.T. Munichikkanna Reddy (supra), I find that the defendants have failed to plead and prove the requisite ingredients of acquiring title by adverse possession.

19. Mr. Deshmukh submitted that the Gift Deed was not produced on record. Gangaram did not become owner of the suit property. Consequently, he could not have passed on better title

to Bhimrao, father of the plaintiff. For the reasons already indicated, I do not find any merit in the submission. The learned District Judge rightly held that Gangaram became the owner on the basis of the Gift Deed executed by Putalabai. Gangaram, in turn, sold the properties in favour of Bhimrao, father of the plaintiff. In view thereof, the substantial questions of law formulated at the time of admission are answered accordingly.

20. In the light of the aforesaid discussion, Appeal succeeds and the order of the learned District Judge dismissing the claim of the plaintiff for possession of suit property no.I is set aside. The suit instituted by the plaintiff is decreed in its entirety. Cross Objections filed by the defendants are dismissed. In the circumstances of the case, there shall be no order as to costs.

(R.G.KETKAR,J.)