

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO.283 OF 2014
WITH
CIVIL APPLICATION NO.724 OF 2014
IN
SECOND APPEAL NO.283 OF 2014**

**MOHANSING S/o.BHAGATSING RAJPUT)...APPELLANT
V/s.
DATTU DIGAMBER DHEDE AND ANR.)...RESPONDENTS**

Mr.Akshay Deshmukh, Advocate for the Appellant.

AND

**SECOND APPEAL NO.297 OF 2014
WITH
CIVIL APPLICATION NO.756 OF 2014
IN
SECOND APPEAL NO.297 OF 2014**

**KISANSING BHAGATSING RAJPUT)...APPELLANT
V/s.
DATTU DIGAMBER DHEDE AND ANR.)...RESPONDENTS**

Mr.Kakasaheb Tandale, Advocate for the Appellant.

Coram: Smt.R.PSondurBaldota, J.

Date : 16th January, 2015.

P.C. :

1 These second appeals are directed against the concurrent findings of the trial court and the lower appellate court. The appellant in Second Appeal No.283 of 2014 is original defendant no.2 and the appellant in Second Appeal No.297 of 2014 is original defendant no.1. Respondent no.1, in both the appeals, is the original plaintiff. Respondent no.2 in Second Appeal No.283 of 2014 is original defendant no.1 and respondent no.2 in Second Appeal No.297 of 2014 is original defendant no.2. The parties shall hereinafter be referred by their original nomenclature.

2 The brief statement of facts is as follows :

 The plaintiff filed suit for possession of the suit property and mesne profits against the defendants. It was his contention that the original owner, one Govindsing, by the Agreement of Sale dated 6th October, 1986, agreed to sell the suit land i.e. Gat No.336/2 admeasuring 97R along with the right to 1/4th share in the water in the well, situate on the land. The suit

land formed part of the larger property at Gat No.336 admeasuring 1 hectare 36R. Govindsing expired on 18th March, 2000. Later, the legal representatives of Govindsing completed the sale by executing Sale Deed dated 19th March, 2001. The plaintiff alleged that in the year 1996, the defendants encroached upon the suit property and illegally constructing a house thereon. The plaintiff had got the land measured on 23rd August, 2002, and the measurements clearly indicated the encroachment on the part of the defendants.

3 Defendant no.2 filed written statement to contest the suit. Defendant no.1 merely adopted the written statement of defendant no.2. Both denied that the plaintiff was the owner of the suit property. According to them, Gat no.336 was owned by Narayansing Rajput, who had two brothers namely – Harising Rajput and Ramsing Rajput. Because Narayansing did not have any son, the suit property devolved upon his brothers. Rupsing, the son of Harising, was looking after Gat No.336. The defendants had disputes over the land at Gat No.336. Defendant

no.1 had filed Special Civil Suit No.143 of 1987 for specific performance of an oral Agreement of Sale against the son of Govindsing. His suit was dismissed and the appeal preferred by him against the decree was also dismissed. Defendant no.1, then filed another suit being Regular Civil Suit No.1014 of 2001 against the plaintiff and the legal heirs of Govindsing claiming right of purchase of the suit property by pre-emption and by specific performance. That suit was also dismissed, but the appeal preferred against the decree of dismissal is pending. The defendants claim an undivided share in the suit property. According to the defendants, they have been residing in the suit property since the year 1987 with the permission of Rupsing. Since they have been in continuous and unobstructed possession of the suit property for more than 12 years, they became owners by adverse possession.

4). The plaintiff examined himself (PW1) and Taluka Inspector of Land Records (TILR) (PW2) and produced documents of 7/12 extracts, measurement map, notices issued to the

defendants and copies of the judgments in the two suits. The defendants examined defendant no.1. They did not produce any document. On appreciation of the evidence, the trial court held that the plaintiff was the owner of the suit property and that the defendants had illegally encroached upon the same. The appellate court confirmed the findings of the trial court.

4 The courts below have noted that the defendants had been, in the past, unsuccessfully attempted to establish their right to the suit property. But, the proceedings taken out by them had failed. In the present proceedings, written statement had been filed by defendant no.2, who did not step into the witness box to give evidence in support of the claim made by him. The evidence on behalf of defendants was of defendant no.1, who had simply adopted the written statement of defendant no.2. As such, several facts relating to the past litigations and the claim for title made by defendant no.2 were not established. Consequently, there was no evidence, whatsoever, to show that the defendants had any interest in the suit property.

5 Mr. Akshay Deshmukh and Mr. Kakasaheb Tandale, the learned advocates for the appellants respectively, submit that the courts below failed to take into consideration the provisions of Order VII Rule 3A of Code of Civil Procedure (CPC) which mandates annexure of rough sketch or map of encroached portion to the plaint and argued that for non-compliance of the mandatory provision, the courts below ought to have dismissed the suit. They also submitted that since the plaintiff himself had claimed in the suit that the defendants are in hostile possession of the suit property, their claim of title by adverse possession stands automatically proved and nothing more was required to be established by the defendants.

6 Undisputedly, the plaintiff had got the land measured by TILR and produced the map prepared by the TILR. The map was duly proved by examining the TILR. Therefore, there is no substance in the first submission on behalf of the defendants. The purpose of the provision of Order VII Rule 3A is to specifically

identify the suit property. That purpose is served by production of the measurement plan which is duly proved by examining the TILR. As regards the claim of title by way of adverse possession, merely because the plaintiff has filed suit for possession against the defendants, their claim of title to the suit property by adverse possession cannot be held to be established. It was necessary for the defendants to lead specific evidence to establish the same. In any case, the attempts on the part of the defendants to establish their right to the suit property have already been rejected in the proceedings filed by the defendant no.2 earlier.

7 In all the above circumstances, the concurrent findings of the courts below seem to be correct and proper findings. There is also no substantial question of law arising in the appeals. Hence, the second appeals, are dismissed.

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