

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 725 OF 2014

Narendra Kashenath Mule

.....Appellant

: V/S :

1). Kamalbai Dattatray Wadekar and Ors.

.....Respondents

* * * * *

Mr. P.R. Arjunwadkar, i/by. Ms. Prabha Badadare, Advocate for the appellant.

* * * * *

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

11th February, 2015.

P.C. :-

1). This Second Appeal is directed against the concurrent findings of fact by the trial Court and the lower Appellate Court.

2). The respondents had filed Regular Civil Suit No. 33 of 2002 against the appellant for removal of encroachment by him to the extent of 600 sq.ft on the land at Survey No.49 by constructing a structure thereon and for possession thereof. The respondents claimed that their predecessor, Dattatray Wadekar was the owner of the land admeasuring 228.4 mts of Survey no.49 and his name has been mutated in the revenue records on 16th November, 1968. The respondents have constructed their

respective houses being 35A, 35B and 35C thereon. The appellant also has house no.36A and house no.36B standing on the very land. In the year 2002, the appellant brought building material to the property for the purpose of carrying out construction in the open space on the property. The respondents therefore filed suit for injunction, simplicitor on 1st August, 2002, but during the pendency of the suit, the appellant completed the construction of the structure. Therefore, the respondents amended the plaint to seek relief of possession by removal of encroachment.

3). The appellant contested the suit claiming that the suit property was owned by him and his father, Kantilal Mule and that the same had been in their possession since beginning. According to him, the original owner was his uncle, Laxman Muley. When Laxman Muley settled in Chinchwad, he transferred all the properties to Kantilal and one Balkrishna by the agreement dated 16th May, 1978. As such, the construction carried out by the appellant is on his own land.

4). The parties led their evidence on their respective claims. The trial Court, on appreciation of the evidence, accepted the evidence of the respondents. It held that the suit property is owned by the respondents jointly and it has been in their joint occupation and enjoyment. The respondents established that, construction admeasuring 600 sq.ft was carried out by the appellant on their land thereby obstructing the respondents possession and enjoyment of the suit property. The trial Court

held that, the respondents are entitled for getting possession of the suit property by demolition of the structure and also perpetual injunction. With these findings, the trial Court decreed the suit on 30th April, 2012.

5). Being aggrieved by the judgment and decree of the trial Court, the appellant preferred Civil Appeal No. 103 of 2012 to the District Court. The lower Appellate Court dismissed the Appeal confirming the findings and decree of the trial Court. It observed that the crux of controversy is the title to the suit property. On perusal of the entire evidence, it found that the respondents had not produced any document of title as contemplated under the Transfer of Property Act to establish their title to the suit property. However, they had produced evidence as regards payment of cess in respect of the suit property since beginning alongwith mutation entries and 7/12 extract thereby establishing that they had been in continuous possession and enjoyment over the suit property. As against this, the appellant did not place on record any document, not even the agreement dated 16th May, 1978 allegedly executed by his uncle, Laxman to show as to how he acquired the suit property from the earlier owner. The Appellate Court, therefore accepted the claim of the respondents and confirmed the decree of the trial Court. Mr. Arjunwadkar, the learned Advocate appearing for the appellant submits that, once the lower Appellate Court held that the respondents had failed to produce any document of title in respect of the suit property, it could not have

confirmed the findings of the trial Court that the respondents are the owners in respect of the suit land and confirmed the decree. He further submits that, possession of the property furnishes, prima-facie proof of ownership casting burden upon the party denying the ownership and establishing the fact. Therefore, according to him, it was for the respondents to establish that the appellant is not the owner of the suit property and the respondents have failed to establish the fact.

6). I find no substance in the contention. As noted by the lower Appellate Court, the evidence on record shows that the respondents have been in possession and enjoyment of the suit property for a long time. They have built three houses thereon, being House nos. 35A, 35B and 35C. The assessment record produced, substantiates this position. The documents of mutation entries in the revenue records and the 7 x 12 extracts, support the respondents. These records have remained unchallenged. As against such record, the appellant has failed to establish his title to the suit property. The lower Appellate Court, then resorting to Section 110 of the Indian Evidence Act, confirmed the finding in favour of the respondents. This is a probable view as regards the fact of possession and title to the suit property. There is no substantial question of law arising for consideration of the Court. Hence, the Second Appeal is dismissed.