

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 121 OF 2014

Haridas Diwalu Mandhare Vs. Sampat Narayan Mandhare

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

Court's or Judge's Order

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Smt. Thakre Adv for appellant.
Shri G. N. Khanzode Adv for respondent.

CORAM: A. S. CHANDURKAR J.

DATED: MARCH 02, 2015.

This appeal has been preferred by the original defendant challenging the decree for possession passed in favour of the respondent.

The dispute between the parties is with regard to ownership of plot no. 8 situated within the limits of Grampanchayat Gangapur tahsil Umred District Nagpur. According to the respondent, on 15.03.1980 aforesaid plot No. 8 was allotted to Rangubai who was the mother of present appellant while plot no. 18 was allotted to the respondent. On 19.02.1986 there was an exchange deed executed between the parties by which aforesaid plots came to be exchanged. The mother of the appellant had filed Regular Civil Suit No. 3 of 1997 seeking declaration of her ownership in respect of the said plot. Said suit came to be dismissed and the decree was confirmed in Regular Civil Appeal No. 212 of 1999. The said decree had thereafter attained finality. The respondent filed present suit for possession on 10.08.2007 contending that as the ownership of the defendant had not been proved, he was entitled for

possession on the basis of title. The present appellant took the stand that initially his mother and there after the appellant were in continuous possession since 15.03.1980 and hence they had perfected the title by way of adverse possession.

The trial Court decreed the suit holding that the exchange deed had been duly approved. It held that the plaintiff was entitled for possession on the basis of said document at Ex. 34. There was also reference to an order passed by the Sub Divisional Officer vide Ex. 28 wherein said exchange was confirmed and mutation entries were directed to be taken. The trial Court therefore decreed the suit and the first appellate Court after re-appreciating the evidence confirmed said decree.

Learned counsel for the appellant submitted that un-disputedly the appellant's mother and thereafter the appellant were in possession of the plot no. 8 since 15.03.1980. Though the suit for declaration of title came to be dismissed, the findings regarding their possession had been recorded in the earlier suit. It was therefore submitted that considering the period for which the appellant was in possession he had acquired title by way of adverse possession.

On the other hand, the learned counsel for the respondent submitted that the appellant's mother had filed suit for declaration of ownership and as the same had been dismissed the findings recorded there in were binding on present appellant. It was submitted that as the exchange deed has been held to be duly proved, the decree passed by the trial Court was legal and proper.

I have considered aforesaid submissions. The adjudication of the

suit filed by appellant's mother seeking declaration of title and its dismissal have attained finality. In said proceedings, the aspect of exchange of plots had been duly considered and held to be proved. Though the trial Court in the earlier suit had recorded a finding that the appellant's mother was in possession of plot no. 8 since 15.03.1980, that by itself was not sufficient to declare that the appellant had become owner by way of adverse possession. In the earlier suit declaration of ownership on very same facts had been sought by appellant's mother which is now been sought in the form of adverse possession by the appellant.

Considering the findings recorded that the exchange deed dated 19.02.1986 had been proved to be executed between the parties, it cannot be said that the defendant was justified in raising the plea of adverse possession. This plea is quite contrary to the earlier plea of ownership that was raised in Regular Civil Suit No. 3 of 1997. Having failed to prove ownership in the earlier proceedings, the plea regarding adverse possession cannot be permitted to be raised. Moreover, for the purposes of the plea for adverse possession, ownership of the actual and true owner is required to be first accepted. Said vital aspect is missing in the present case. Both the Courts have therefore rightly considered said defence and have thereafter granted relief to the original plaintiff.

The findings, therefore, as recorded are findings of facts. The same do not give rise to any substantial question of law. Hence, Second Appeal is dismissed with no order as to costs.

JUDGE

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