

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.137 OF 2015

Dinesh s/o Shriram Ghormode & Ors.

-vs-

Shri Khandoba Deosthan Committee, Chandrapur, Thr. President

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

Court's or Judge's Orders.

Shri R. L. Alone, Advocate for applicant/appellant.
Shri V. N. Morande, Advocate for respondent.

CORAM : A.S.CHANDURKAR J.

DATE : FEBRUARY 24, 2015.

This appeal filed by the original plaintiffs challenges the dismissal of the suit for declaration of title with relief of perpetual injunction. It also challenges the relief granted to the defendant in the counter-claim.

The appellants are the original plaintiffs who claim that their predecessor-Sitaram was in possession of field Gut No.72 and Gut No.23 which was owned by the defendant-trust. Initially the predecessor of the appellants claimed that he was tenant of aforesaid land and he was cultivating the same. On 29/03/1957, there was an agreement entered into by Sitaram-the predecessor with the defendant-trust. Since said period, Sitaram and thereafter the plaintiffs continued in possession. They filed suit in the year 1996 seeking declaration that they had perfected their title by way of adverse possession and hence sought declaration in that regard. Prayer was also made for grant of

permanent injunction. The defendant filed counter-claim seeking possession of aforesaid fields on the ground that possession of the plaintiffs was only in the capacity of tenants for particular period. The trial Court held that the plaintiffs had failed to prove that their title had been perfected by way of adverse possession and dismissed the suit. It however, allowed the counter-claim and directed delivery of possession. The first appellate Court held that the plaintiffs were in continuous possession since 1957 but they had not become the owners by way of adverse possession. It therefore confirmed the decree for possession.

The learned counsel for the appellants submitted that the evidence on record indicated possession of the plaintiffs and their predecessor since the year 1957. The fact that in the year 1961, a notice came to be issue to hand over possession itself indicated that after said date, the possession of the plaintiffs was adverse to the interests of the defendant. It was however submitted that the agreement at Exhibit-189 was created by the defendant only to defeat the claim of the plaintiffs. The learned counsel therefore submitted that as the first appellate Court had held the continuous possession of plaintiffs since 1957, the declaration as regards adverse possession ought to have been granted. In this regard reliance was placed on the decision in ***Gangadhar Pandurang Puranik Vs. Dnyanoba Nivrutti Mundhe & Ors. (2010(7) Mh.L.J. 477)***.

The learned counsel for the respondent submitted that possession of the predecessor of the plaintiffs was on the basis of agreement for cultivating the said fields. Merely because possession of the suit fields was not delivered after

issuance of notice, same would not make their possession adverse to that of the defendant. He further submitted that as per the document at Exhibit-189, the plaintiffs had been put in possession in the year 1992-93 and they had thereafter sought declaration of their title.

I have considered the aforesaid submissions. The trial Court on the basis of evidence of the parties, held that the appellants were in possession in the year 1957 and for some period thereafter. It recorded a finding that in view of Exhibit-128, the possession of some other persons were shown in the year 1975-76. Subsequently on the basis of agreement at Exhibit-189 they were again put in possession in the year 1991. The first appellate Court has however held that possession of the appellants was since the year 1957. It also held that the agreement at Exhibit-189 was duly proved.

As regards the aspect of adverse possession, it has been found that by notice at Exhibit-161, the plaintiffs were called upon to hand over possession. Continuation of the plaintiffs thereafter cannot lead to the conclusion that the plaintiffs had set up title in themselves and were therefore claiming adversely against the defendant. Mere continuation in possession by itself would not be sufficient to entitle the plaintiffs for a declaration that they had become owners by way of adverse possession. This aspect has been rightly considered by both the Courts while holding that the plaintiffs had not perfected their title on the basis of continuation of possession. The facts involved in the decision of ***Gangadhar Pandurang Puranik*** (supra) indicate that a sale deed had been executed by the predecessor in title of the Inam holder and subsequently the Inam came to be

abolished. It was held that even on the basis of an invalid sale deed, the purchaser who was in possession could claim valid title after expiry of 12 years.

Aforesaid position cannot be made applicable to the facts of the present case. Merely on the basis of long standing possession, it cannot be held that the plaintiffs had perfected their title on the plea of adverse possession.

In view of aforesaid discussion, it cannot be said that the conclusion arrived at by both the Courts is contrary to law. No substantial question of law therefore arises for consideration in the Second Appeal. Same is therefore dismissed with no order as to costs.

JUDGE