

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

SECOND APPEAL NO.499 OF 2014

C. G. Shashidharan

-vs-

Habibkhan S/o Sherkhan Pathan

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

Court's or Judge's Orders.

Mr.N. G. Jetha for the appellant.
None for the respondent.

CORAM : A. S. CHANDURKAR, J.

DATE : January 05, 2015.

The original defendant has challenged the decree for possession passed by the trial Court that has been confirmed by the judgment and decree.

The respondent-original plaintiff had filed suit for possession on the basis of title. It was his case that the suit property was purchased from one Dhanjibhai Sortia on 11/12/2003. According to him, though the defendant was occupying the premises in question and carrying on welding work, his possession was as a trespasser.

The defendant in the written statement took a stand that he acquired title by adverse possession. He stated that he had initially filed a suit for specific performance against Dhanjibhai which suit came to be dismissed.

The trial Court held that the plaintiff was the owner on the basis of sale deed dated 11/12/2003. It further held that as the defendant did not lead any oral evidence, his stand that he had become owner by adverse possession could not be accepted. The suit was therefore partly decreed.

The first appellate Court after re-appreciating the evidence confirmed the decree passed by the trial Court.

Shri Jetha, learned counsel appearing for the appellant submitted that the plaintiff in the plaint had admitted the possession of the defendant and hence there was no need of any further evidence as regards claim of adverse possession. He further submitted that the status of the defendant as tenant had not been admitted though possession was sought on the ground of bonafide deed. He urged that these vital aspects were not considered by both the Courts.

In the plaint, it has been stated that the defendant had filed R.C.S. No.256 of 1988 for specific performance of oral agreement against the original owner-Dhanjibhai. The said suit was dismissed and the decree was confirmed in appeal. It is therefore clear that as the defendant was seeking relief of specific performance against the original owner, the title of said Dhanjibhai was admitted by the defendant. The sale deed in question came to be executed in favour of the plaintiff on 11/12/2003. It is therefore clear that the ownership of Dhanjibhai till the execution of the sale deed could not have been disputed by the defendant. For succeeding on the basis of plea of adverse possession, it was necessary for the defendant to have disowned the title of the original owner. However, by filing suit for specific performance against the said Dhanjibhai, it cannot be said that the ownership of Dhanjibhai was disputed by the defendant.

The suit as filed is on the basis of Sale Deed dated 11/12/2003. The stand of the defendant in the earlier

proceedings was that he was not the tenant of Dhanjibhai. Thus, treating the possession of the defendant as a trespasser, the suit has been decreed on the basis of title. There is no decree for damages though prayer in that regard was made. It is therefore clear that in view of Sale Deed dated 11/12/2003, the plaintiff was entitled to possession of the suit property.

In view of the aforesaid, it is clear that both the Courts have rightly held in favour of the plaintiff. The evidence on record has been properly appreciated. No substantial question of law arises in the second appeal. Same is therefore dismissed with no order as to costs.

As the appellant is in possession of the suit property, his possession is protected for a period of four weeks from today.

Civil Application No.1354 of 2014

As a result of dismissal of the second appeal, Civil Application No.1354 of 2004 does not survive. Same stands disposed of.

JUDGE