

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Second Appeal No. 36 of 1992

* Jagannath Savleram Raoot,
Dead, through legal
representatives:

1-A) Bhikubai Jagannath Raut,
Age 70 years,
Occupation : Agriculture

1-B) Sitaram Jagannath Raut,
Age 50 years,
Occupation : Agriculture.

1-C) Popat Jagannath Raut,
Age 45 years,
Occupation : Agriculture.

1-D) Balu Jagannath Raut,
Age 40 years,
Occupation : Agriculture.

All R/o Ghulewadi,
Taluka Sangamner,
District Ahmednagar.

1-E) Sunita Bharat More,
Age 30 years,
Occupation : Agriculture,
R/o Ganore, Taluka Akole,
District Ahmednagar.

1-F) Anita Sunil Khatal,
Age 28 years,
Occupation : Agriculture,
R/o Dhandarphal,
Taluka Akole,
District Ahmednagar.

.. Appellants.

Versus

- 1) Vilas Dagadu Dinkar,
Age 42 years,
Occupation : Service,
R/o Sangamner,
Taluka Sangamner.
- 2) Ashok Dagadu Dinkar,
Age 40 years,
Occupation : Service
R/o As above.
- 3) Saraswatibai w/o Dagadu Dinkar,
Age 67 years,
Occupation : Household,
R/o As above.
- 4) Hemlata w/o Arun Petkar,
Age 36 years,
Occupation : Household,
R/o Rasta Peth, Taluka Peth,
District Nasik.

.. Respondents.

Shri. S.K. Shinde, Advocate, for appellant.

Shri. S.T. Shelke, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.**DATE : 29 MARCH 2016****JUDGMENT:**

- 1) The appeal is filed against the judgment and decree of Regular Civil Appeal No.296/1985 which was pending in the Court of the 2nd Additional District Judge,

Ahmednagar. The appeal filed by the original plaintiffs against the judgment and decree of Regular Civil Suit No.396/1979 is allowed and the relief of possession is given to the respondents, plaintiffs. Both the sides are heard.

2) The suit was filed in respect of agricultural land bearing Survey No.480/5-B having area of 24 R and situated at Sangamner, Tahsil Sangamner, District Ahmednagar. It is the case of the plaintiffs that the suit property was owned by one Dagadu Dinkar, who was the husband of plaintiff No.3 and father of plaintiff Nos.1,2 and 4. This property was purchased in Government auction by Dagadu. It is the case of the plaintiffs that Dagadu was cultivating the land during his lifetime and after his death, as the successors of Dagadu, they had cultivated the land and they were in possession till the year 1976. It is contended that plaintiffs were out of station for some time and during that period the defendant took possession illegally and forcibly. It is contended that the defendant refused to return back the possession and so cause of action took place for the suit.

The suit was filed in the year 1979. Relief was claimed for possession by contending that possession needs to be given to the plaintiffs as they are the owners.

3) Defendant filed written statement and contested the matter. The defendant contended that the suit property was in possession of the family of the defendant from prior to 1-4-1957. It is contended that Amruta Raut was elder brother of defendant and the property was in his possession and in one tenancy proceeding the family of the defendant was declared as the protected tenant and then they became owner of the suit property. The defendant contended that the plaintiffs and their predecessor Dagadu were living at other station and so there was no question of cultivation of the land by them. Alternate contention was made that from 1957 the land was with the family of the defendant and so the defendant had become owner due to the adverse possession.

4) On the basis of the aforesaid pleadings issues were framed. Both the sides gave evidence. The trial

Court held that Dagadu had purchased the land in auction in the year 1933. However, the Court held that the suit was not filed within prescribed period of limitation and the suit was covered by Article 64 of the Limitation Act. Only on the point of limitation the suit was dismissed by the trial Court. The first appellate Court has held that in view of the nature of the pleadings and the reliefs claimed, Article 65 of the Limitation Act needs to be applied. The first appellate Court has held that the defendant failed to prove that he is owner of the suit property and decree is given.

5) This Court admitted the appeal on 11-3-1992 but substantial questions of law were not formulated. In view of the contentions made in the appeal memo, the decisions given and the submissions made today, the parties were allowed to argue on following substantial questions of law :-

(i) whether the first appellate Court has committed error in holding that Article 65 of the Indian Limitation Act 1963 is applicable to the present matter ?

(ii) whether there was necessary pleadings in respect of adverse possession and whether there was evidence to prove the ownership of defendant by adverse possession ?

6) This Court has already quoted the reliefs claimed in the plaint. It is specifically mentioned that the plaintiffs want to get possession as owners. Though it is contended that they lost possession somewhere in the year 1976, that does not mean that suit was filed on possessory title, on the contention that they were in possession during last 12 years. Both the sides relied on some reported cases which this Court is quoting at appropriate place. Here only it needs to be observed that in view of the reliefs claimed and as the suit was filed by the plaintiffs as owner, Article 65 of the Limitation Act is applicable.

7) This Court has carefully gone through the evidence given by both sides. The document of title, the certificate given in auction sale of the year 1933 in favour of Dagadu, predecessor-in-title of the plaintiffs is produced at Exhibit 41. Revenue record is also produced

to show that on the basis of this document, name of Dagadu Dinkar was entered as owner. Revenue record starting from the year 1966-67 is produced and in that record also there is mention that after the death of Dagadu, names of his successors, plaintiffs, were entered. In the substantive evidence, the defendant has given clear admission that Dagadu was the owner of this land. He has given one more admission that his father was giving crop share of 50% to Dagadu during his lifetime. This substantive evidence shows that the defendant is not disputing that at least at the starting point, possession was permissive. In view of this circumstance, it was necessary for the defendant to show and prove as to when the possession became adverse.

8) The record shows that in the past also the case was put up that defendant had become owner under tenancy Act but he could not succeed to prove the ownership. Now there is admission of aforesaid nature in the present matter. When the title of the plaintiffs is admitted, the only thing which was remaining with the defendant was to plead and prove the case of adverse

possession. Alternate defence of adverse possession was taken but in view of the aforesaid substantive evidence that the defendant was giving crop share, it cannot be believed that right from beginning, for more than 12 years the possession of the defendant was adverse to the plaintiffs.

9) The learned counsel for the appellant placed reliance on following reported cases :-

- (i) **AIR 2004 SC 4261 (Ramaiah v. N. Narayana Reddy)**
- (ii) **AIR 1965 SC 1553 (Gurbinder Singh v. Lal Singh)**
- (iii) **AIR 1968 SC 1165 (Nair Service Society Ltd. v. K.C. Alexander).**
- (iv) **AIR 1998 SC 1132 (Tirumala Tirupati Devasthanams v. K. M. Krishnaiah).**
- (v) **AIR 1973 SC 2537 (Rajender Singh v. Santa Singh).**

10) On the other hand, learned counsel for the respondent placed reliance on a case reported as **AIR 1986 SC 1509 (Dudh Nath v. Suresh Chandra)**. The case cited by the learned counsel for the respondent is on the point that the finding on limitation is finding of fact and

in second appeal interference in such finding is not possible. In the cases cited by the learned counsel for the appellant the law with regard to Articles 64 and 65 of the Limitation Act is discussed and the Apex Court has also discussed the nature and extent of burden of proof on both the sides. The facts and circumstances of each and every case are always different. In the present matter the burden to prove that the possession was adverse and the ownership is acquired due to adverse possession was on defendant.

11) In view of the aforesaid position of law and the facts and circumstances of the present case, this Court holds that the first appellate Court has not committed any error in allowing the appeal and in giving relief of possession to the owner. So both the points are answered in negative, against the appellant.

12) In the result, the appeal stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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