

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

SECOND APPEAL NO. 307 OF 2000

1. Premchand S/o Janardhan Patil **APPELLANT/**
[since deceased Thr. L.Rs.] **[ORI. DEFT.]**

1-A. Pravin S/o Premchand Patil
Age : 48 Yrs., Occ. Service,
R/o : Shiv Colony,
Near Vedi Mata Mandir,
Bhusawal, Tq. Bhusawal,
Dist. : Jalgaon.

1-B. Smt. Sindhu W/o Premchand Patil
Age : 78 Yrs., Occ. Household,
R/o : Shiv Colony,
Near Vedi Mata Mandir,
Bhusawal, Tq. Bhusawal,
Dist. : Jalgaon.

2. Smt. Sumati Tryambak Kawthalkar
[since deceased Thr. L.Rs.]

2-A. Shirish s/o Trimbak Kawathalkar
Age : 45 Yrs., Occ. Service,
R/o : Gadkari Nagar, Bhusawal,
Tq. Bhusawal, Dist. : Jalgaon.

V E R S U S

1. Smt. Pravara Murlidhar Kulkarni ...**RESPONDENT/**
[since deceased Thr. L.Rs.] **[ORI. PLTFF.]**

1-A. Murlidhar Devidas Kulkarni
Age : 68 Yrs., Occ. Pensioner &
Agril., R/o : Adawad,
Tq. Chopada, Dist. Jalgaon.

1-B. Dipak Murlidhar Kulkarni
Age : 68 3Yrs., Occ. Service,
R/o : Adawad, Tq. Chopada,
Dist. Jalgaon.

1-C. Kishor Murlidhar Kulkarni
Age : 37 Yrs., Occ. Education,
R/o : Adawad, Tq. Chopada,
Dist. Jalgaon.

1-D. Mrs. Lata Jayaram Deshpande
Age : 34 3Yrs., Occ. Household,
R/o : C/o Jayant Shriram
Deshpande, Plot No. 9,
Kirtin Nagar, Navi Sanghvi,
Pune.

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Mr. V.J.Dixit, Senior Counsel i/b Mr. L.V.Sangit,
Advocate for Appellants.

Mr. S.S.Bora, Advocate for R – 1-A to 1-D.

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CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 01/07/2016

JUDGMENT :

1. The Appeal is filed against the Judgment and Decree of R.C.A. No. 141/1995 which was pending in the Court of the Extra Joint District Judge, Jalgaon. The Appeal filed by the present respondent/original plaintiff against the Judgment and Decree of R.C.S. No. 119/1992 which was pending in the Court of the Civil Judge [Jr.Division], Bhusawal is allowed by the first appellate Court and decree of declaration of ownership is given in favour of the plaintiff. Heard both sides.

2. In short, the facts leading to the institution of the Appeal can be stated as follows.

The Suit was filed in respect of plot No. 80, which is part of S.No. 101/3 admeasuring 3713 Sq. Feet situated at Bhusawal. It is the case of the plaintiff that defendant No. 2 was the owner of this property and under registered sale deed on 25/06/1974, defendant No. 2 sold the suit property to the plaintiff and on the

date of the sale deed, plaintiff was put in possession of the suit property. It is her case that she has been in possession of the suit property as owner since the date of the sale deed.

3. It is the case of the plaintiff that due to the service of her husband and due to his health condition, her family was out of station for some time. It is her case that defendant No. 2 executed sale deed dated 23/01/1986 in favour of defendant No. 1 in respect of the suit property and on that basis defendant No. 1 has got entered his name in the property card of the suit property. It is contended by the plaintiff that she had challenged the said entry, but the revenue proceeding is decided against her and so the cause of action has taken place for the Suit.

4. Defendant No. 2 admitted that he had executed sale deed in favour of the plaintiff in the year 1974, but he denied the other contentions. He contended that the plaintiff did not get the possession of the suit property under the sale deed. It is his case that plaintiff did not take steps for effecting mutation in her favour in

the record of city survey on the basis of the sale deed and he continued to remain in possession. He contended that he has become owner of the suit property due to adverse possession. He contended that he sold the suit property to defendant No. 1 under registered sale deed dated 21/03/1986 and he has given possession of the suit property to defendant No. 1.

5. Defendant No. 1 contested the matter and contended that he is bonafide purchaser without notice and for lawful consideration. He contended that he got the possession of the property from defendant No. 2. He contended that he had given public notice before purchasing the property from defendant No. 2. He has contended that he has been in possession of the property since 21/03/1986.

6. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. The revenue record was produced by the defendants. The original sale deed was produced by the plaintiff in support of her case, but defendant No. 1 did not produce the sale deed. The trial Court had dismissed the Suit by holding that under

sale deed of the year 1986 made by defendant No. 2 in favour of defendant No. 1, the possession was not given. The trial Court further held that the Suit was filed in the year 1992 and so it was not within the prescribed period of limitation. The trial court held that plaintiff was in possession on the date of the Suit and as ultimate relief of possession was not claimed, she is not entitled to get the relief of declaration. The trial court considered the decision of the revenue proceeding given in favour of defendant No. 2. The first appellate Court has set aside the decision and it is held that the plaintiff is owner and she has been in possession of the suit property.

7. This Court admitted the appeal on 31/10/2002 on following substantial question of law.

Whether Article 58 or 59 of the Limitation Act is applicable and whether the Suit was within limitation ?

8. The oral and documentary evidence of the parties show that the suit property is open plot. It is part of big survey number. 7/12 extract shows that this land was not under cultivation. No entry of possession was

taken even of defendant No. 1. When a person purchases the property under registered sale deed, it is the responsibility of the concerned authority to inform to the revenue authority and make the mutation on the basis of the sale deed. Only because plaintiff did not take steps to enter her name, it can not be said that she had not become owner under the registered sale deed. In the sale deed there is specific mention that possession was given to the plaintiff in the year 1974. In view of the recitals of the sale deed and the circumstance that it is open plot, the burden was heavy on defendant No. 2 to prove that subsequent to the date of the sale deed made in favour of the plaintiff, he took the possession of the land. There is no such evidence from defendant No. 2 or defendant No. 1.

9. The case of ownership of defendant No. 2 due to adverse possession could not have been proved in view of the circumstance that the sale deed was executed in favour of the plaintiff on 25/06/1974 and defendant No. 2 executed the sale deed in favour of defendant No. 1 on 21/03/1986, before the expiry of period of 12 years. Further, it can not be said that the Suit of the plaintiff

was not in limitation as the cause of action took place for her when the revenue authority decided against her. So, Article 58 of the Limitation Act is applicable in the present matter.

10. Only because the owner remains out of station for some time, owner does not lose possession over the immovable property. On the date of the Suit, it was open space. In view of these circumstances, the trial Court had committed error in holding that plaintiff had lost possession. Learned counsel for the appellants placed reliance on the case reported as 1997 (4) ALL MR – 192 [Jagdishsingh Deonandansingh Vs. Feku Jamnaprasad Yadav & Ors.]. It is observed by this court that in view of Section 34 of the Specific Relief Act, possession needs to be claimed and the Suit only for relief of declaration can not be entertained. There can not be dispute over this proposition. It is already observed that the plaintiff has been in possession of the suit property and so the case cited supra can not help the defendants. Defendant No. 1 did not take search of the record of registration and facts and circumstances indicate his knowledge about previous transaction.

11. The aforesaid point is answered accordingly and the Appeal stands dismissed. In view of dismissal of Second Appeal, C.A. No. 3377 of 2000 stands disposed of.

[T.V.NALAWADE, J.]

KNP/S.A. 307.2000 - [J]