

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

39 SECOND APPEAL NO. 139 OF 2016
WITH CA/2092/2016 IN SA/139/2016

BHUJANGRAO BHAURAO DHOBLE AND ORS
VERSUS
SHRINIVAS BALAYYA GARDAS AND ANR

...
Advocate for Appellants : G.R. Syed h/f. Deshmukh M. S.
Advocate for Respondents 1 : S.R. Deshpande
...

CORAM : T.V. NALAWADE, J.
DATED : 25th April, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Special Civil Suit No. 38/2012, which was pending in the Court of Civil Judge, Senior Division, Jalna and also to challenge the judgment and decree of Regular Civil Appeal No. 203/2013, which was pending in District Court, Jalna. The suit filed by present respondents, Shrinivas and Ramesh for relief of possession is decided in their favour. Both the sides are heard.

2. The suit was filed in respect of one plot, which is given No. 8 in lay-out-plan and which is described as Municipal House No. 3-10-73-13 in the record of Local Body of Jalna. The size of this plot is around 180 Sq. Mtrs. Plaintiffs are the owners of this plot. It is contended that the land which was subsequently

developed was purchased by the plaintiffs in the year 1975 and the suit plot is one of the plots of plaintiffs. It is contended that due to temporary absence of the plaintiffs at the place, the defendants made encroachment over the plot and made construction on some portion. It is contended that the plaintiffs got the knowledge about the construction in April 2012 and when defendants refused to return back the possession, the suit was required to be filed. It is contended that the defendants are demanding Rs. ten lakh to vacate the premises.

3. Defendant Nos. 1 to 3 filed joint written statement. It is contended by them that defendant No. 2 was working as a watchman with plaintiffs and he was taking care of plots which were prepared after development of the land. It is contended that the suit plot was sold by plaintiffs to defendant No. 2 for the consideration of Rs. 65,000/- and it was oral transaction. It is contended that plaintiffs had promised to execute the sale deed and due to this, the construction was made by defendant No. 2 on the plot. It is contended that defendant No. 2 has been in possession of the plot since the year 1981. It is contended that in the assessment record of Local Body, the name of defendant No. 2 is entered as the owner of the construction and defendant No. 2 has taken connection of electricity for this house. It is

contended that prices of the properties have increased many times and plaintiffs are trying to take possession by misusing the circumstance that sale deed is not executed in favour of defendant No. 2.

4. Issues were framed on the basis of aforesaid pleadings. Both the sides gave evidence. On one hand, defendant No. 2 contended that he was watchman and he was taking care of all the plots prepared by the plaintiffs in the land purchased by them and on the other hand, he is claiming that his possession is adverse to the plaintiffs. He has also alternatively claimed that he has become owner as the plot is sold to him by the plaintiffs. Thus, the title of the plaintiffs is not disputed by the defendant No. 2. Defendant Nos. 1 and 3 did not contend anything about their interest in the plot, but the reasoning given by the Courts below show that it is the defendant No. 1 who was taking interest in defending the matter rather than defendant No. 2.

5. Defendant No. 2 has placed reliance mainly on the record of assessment created by Local Body and the record of connection of electricity taken by him. The record of assessment was created in the year 2005 and since then, defendant No. 2

started making payment of the property tax to the Local Body. The connection of the electricity was taken in the year 2009. Though defendant No. 2 contended that he came in possession in the year 1981, in the evidence, he stated that he made the construction in the year 1990. Admittedly, no permission was obtained from Local Body by defendant No. 2 and there was no such permission possible as defendant No. 2 was not the owner on record. Thus, there is only oral evidence in support of aforesaid contentions from the defendants and there is record starting from the year 2005.

6. In the pleading of written statement and in evidence, defendant No. 2 has admitted that he was appointed as watchman. If huge property was developed by plaintiffs and they had appointed defendant No. 2 as watchman, in ordinary course, it needs to be presumed that defendant No. 2 was allowed to reside in some portion as he was to take care of the property as watchman. Thus, the possession of defendant No. 2 was permissive in nature, atleast in the beginning. In view of these circumstances, it was necessary for defendant No. 2 to establish that from particular time his possession became adverse. It can be said that after entering the name in assessment record, defendant No. 2 tried to contend that he was the owner of the

property. However, such possession needs to be open, hostile, within the knowledge of the plaintiffs. It is not his case that his activities were hostile and on the contrary defendant No. 2 has contended that only due to permission given by plaintiffs, he could do such acts. It is his contention that due to the sale of the property in his favour, plaintiffs permitted him to make the construction. Thus, defendant No. 2 has pleaded that his possession was permissive and it was not hostile. In view of these circumstances, there was no room to prove the ownership by adverse possession.

7. There is only oral evidence to show that defendant No. 2 purchased the plot from plaintiffs. Defendant No. 2 has contended that considering was Rs. 65,000/- and possession was also given. So, necessary stamp duty ought to have been paid and document ought to have been registered. Due to absence of both the things it is not possible to believe that property was sold to defendant No. 2 by plaintiffs. No title passed to defendant No. 2 due to absence of registered document. Thus, the plaintiffs' ownership over the plot is not disputed and defendant is now claiming that he is the owner of the plot. In view of these circumstances, there was no other alternative before the Courts below than to decree the suit filed for

possession. The findings of the Courts below are of questions of facts and they are concurrent findings. It is not possible to interfere in such findings. No substantial question of law as such is involved in the matter and there is no question of admission of the appeal. In the result, the appeal stands dismissed. Civil Application disposed of.

[T.V. NALAWADE, J.]

ssc/