

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

Second Appeal No. 441 of 2002

* Madhav Reddy s/o Govinda Navalgire,
Age 60 years,
Occupation : Agriculture,
R/o Ambegaon, Taluka Udgir,
District Latur
Through his General Power of
Attorney Holder
Venkatrao Madhav Reddy,
Age 40 years,
Occupation: Agriculture. **.. Appellant.**

Versus

- 1) Madhukar s/o Eknath Katampalle,
Age 32 years,
Occupation : Agriculture,
R/o Ambegaon, Taluka Udgir,
District Latur.
- 2) Eknath s/o Gangaram Katampalle,
Age 60 years,
Occupation : Agriculture,
R/o Ambegaon, Taluka Udgir,
District Latur.
- 3) Bhanudas s/o Eknath Katampalle,
Age 35 years,
Occupation : Agriculture,
R/o Ambegaon, Taluka Udgir,
District Latur.
- 4) Hirabai w/o Eknath Katampalle,
Age 50 years,
Occupation : Agriculture,
R/o Ambegaon, Taluka Udgir,
District Latur. **.. Respondents.**

Shri. A.N. Sabnis, Advocate, holding for Shri. A.P. Shah, Advocate, for appellant.

Shri. K.D. Bade Patil, Advocate, for respondent No.1.

Appeal is abated as against respondent Nos.2 and 4.

Respondent No.3 - served-absent.

CORAM: T.V. NALAWADE, J.

DATE : 6th MAY 2016

JUDGMENT:

1) The appeal is filed against the judgment and decree of Regular Civil Suit No.195/1980 which was pending in the Court of the Civil Judge, Junior Division, Udgir, District Latur and also against the judgment and decree of Regular Civil Appeal No.21/2000 which was pending in the Court of the Additional District Judge, Udgir. Heard both the sides.

2) Respondent No.1 - Madhukar had filed the aforesaid suit for recovery of possession of agricultural land Survey No.21/*Kha* admeasuring 3 hectares 89 R situated at Ambegaon, Tahsil Udgir. It is the case of Madhukar that the suit property is his ancestral property

and the property has come to his share in partition which took place amongst the plaintiff, his father and real brother. Defendant No.2 is father of the plaintiff and defendant No.3 is the real brother of the plaintiff. Defendant No.4 is wife of defendant No.2. It is contended that defendant No.1 is real brother of defendant No.4 and so he is maternal uncle of the plaintiff.

3) It is the case of Madhukar that after the death of his grandfather, defendant No.2 married with defendant No.4. It is contended that after the marriage, defendant No.1 came to village Ambegaon with defendant No.4 and he started living with the family of defendant No.2. It is contended that defendant No.2 is a simpleton person and defendant No.1 started managing the properties of defendant No.2. It is contended that behind the back of the plaintiff and defendant No.2, defendant No.1 entered his name in the revenue record of the suit land as the owner. It is contended that after the year 1979 when the plaintiff tried to do agricultural operations in the suit land, defendant No.1 obstructed the plaintiff. It is contended that the plaintiff then made search of the revenue record

and he realized that defendant No.1 had created some false revenue record. It is contended that the defendant No.1 was cultivating the land in the past to help the family of defendant No.2 as he was brother of the defendant No.4. It is contended that defendant No.1 has misused the circumstance that defendant No.2 is a simpleton person and his son, defendant No.3 was minor at the relevant time. By making the aforesaid contentions the possession is claimed from defendant No.1.

4) Only defendant No.1 contested the suit by filing written statement. Defendant No.1 admitted his relationship with the plaintiff and other defendants. He admitted that his native place is different and he had come to Ambegaon. However, he has denied that he had come to Ambegaon to help the family of the defendant No.2. It is his case that about 35 years prior to the date of the suit, partition had taken place amongst the sons of father of the defendant No.2 and the suit land was allotted to the share of defendant No.2. It is contended that defendant No.1 and his parents shifted to Ambegaon when he was aged about 5 years. He has denied that he was

asked to cultivate the land by defendant No.2 or defendant No.4 to help them. He has denied that there was partition in the year 1979 and in the partition the suit land went to the share of the plaintiff. It is the case of the defendant No.1 that in the past the suit land was mortgaged by defendant No.2 to one Sangappa Yedwe for three years like 1951, 1952 and 1953. It is contended that the mortgage was redeemed by defendant No.2 by using the money given by defendant No.1. It is contended that the defendant No.2 then sold the suit property to defendant No.1 for the consideration of Rs.1000/- and due to the said transaction, defendant No.1 came in possession of the suit property. It is contended that the transaction took place at the time of Gudi Padwa of the year 1953 and though no document of sale was executed, mutation was made in favour of defendant No.1 and since then he is enjoying the property as owner.

5) Defendant No.1 took alternate defence that he has become owner by adverse possession as he has been in possession since the year 1953.

6) Issues were framed by the trial Court on the basis of the aforesaid pleadings. Both the sides gave evidence. Both the Courts have held that defendant No.1 failed to prove that he has become owner due to adverse possession. This Court admitted the appeal on 25-6-2007 on the following substantial question of law :-

"Whether in the facts and circumstances of the present case, the suit is barred by limitation and that the adverse possession of the appellant is transformed into title by prescription and, therefore, the impugned decree for eviction and delivery of possession is bad in law and the finding of the first appellate Court in this behalf is perverse?"

7) The plaintiff has examined many witnesses to prove that defendant No.1 was helping the defendant No.2 and also to prove that the defendant No.2 is simpleton person. These witnesses have given evidence that possession of the defendant No.1 is permissive in nature. One witness PW 6 Maroti Telang, aged about 80 years, resident of Ambegaon, has given such evidence. Though the plaintiff tried to prove that he got possession after the partition in the year 1979, the evidence of his witnesses

and the record do not support the said case. The revenue record shows that defendant No.1 was in possession right from the year 1953-54 (Exhibit 45).

8) Exhibit 45 is the Khasra Pahani Patrak and it shows that in the year 1953-54 one Rama Machrandi, probably predecessor of defendant No.2, was shown as Pattedar/Inamdar. Then this record shows that defendant No.1 was cultivating the suit land in the year 1953-54. Exhibit 47 shows that from the years 1955 to 1961 also the defendant No.1 was cultivating the suit land but entry of the name of the defendant No.1 came to be made in ownership column also. Exhibit 47 shows that no mutation was made to show as to how defendant No.1 became the owner and this document shows that defendant No.1 was already in possession and so he had become the owner.

9) One witness Yenka Reddy, brother of Sangappa, whose name is mentioned in the written statement is examined by defendant No.1. This witness has given evidence that in his presence amount of Rs.1000 was given by defendant No.1 and this amount was distributed

between Sangappa and defendant No.2 and amount of Rs.500 was given to Sangappa. Further he has tried to say that the land was mortgaged for the consideration of Rs.1000 by defendant No.2. Thus he has tried to say that the defendant No.1 purchased the land from defendant No.2 for the consideration of Rs.1000/-. His evidence does not appear to be probable and convincing as Sangappa would not have accepted Rs.500/- for returning back the land if he had given Rs.1000 to defendant No.2. Further it does not look probable that if the land was mortgaged for Rs.1000 the defendant No.2 would have sold the land for Rs.1000 to the defendant No.1. There is no such specific pleading in the written statement. No exact amount of mortgage money is mentioned in the written statement. The case stated by the witnesses in the evidence is also not mentioned in the written statement. Further there is no record like entry in the revenue record of such mortgage made in favour of Sangappa.

10) The suit was filed in the year 1980. On the date of the suit, age of defendant No.3 was shown as 30 years and so he was born prior to the year 1952. It can be said

that plaintiff was not born at the relevant time as he gave his age as 22 years on the date of the suit. Due to these undisputed circumstances it can be said that defendant No.2 had married with defendant No.4 prior to the year 1952. The case of the defendant No.1 that he purchased the property from defendant No.2 is not believable. His age was hardly 22 years. There is no record to show that the defendant No.1 had any independent source of income. There is no such pleading though in the evidence he has tried to say that his family had agricultural land at other place and said land was sold at the relevant time. These circumstances have created doubt about entire defence taken by defendant No.1 in the written statement. As there was no document like sale deed or any other document made in favour of the defendant No.1 by defendant No.2, it was necessary for the defendant No.1 to explain the aforesaid circumstances. It does not look probable that after making payment of Rs.1000 defendant No.1 did not obtain anything in writing from defendant No.2. Due to all these circumstances the case of the plaintiff appears to be more probable in nature. Thus the possession of the defendant No.1 over the suit property

was only permissive possession and that was due to relationship between him and the defendant No.1. The findings recorded by the Courts below are concurrent on this point.

11) The learned counsel for the appellant placed reliance on a case reported as **(2008) 4 SCC 594 (Anathula Sudhakar v. P. Buchi Reddy)**. The Apex Court has discussed the provisions of Sections 5,6,37 and 38 of the Specific Relief Act, 1963 and also the provisions of the Transfer of Property Act. The facts of the reported cases are totally different. Two other cases reported as (1) **(2000) 7 SCC 215 (Santosh Singh v. Mahant Iqbal Singh)**; and,(2) **(2006) 7 SCC 570 (T. Anjanappa v. Somalingappa)** were also cited. The third case is on the concept of adverse possession. The facts of these reported cases were also different. Only due to some entry made in the revenue record, no title has passed in favour of defendant No.1. It can be said that when he was already in possession from prior to making the entry in his name in ownership column he cannot say that he got the possession under the so called oral sale transaction. Due

to all these circumstances there was no other alternative before the Courts below than to hold that possession is permissive and the plaintiff is entitled to get the decree. In the result, the point is answered in negative.

12) The appeal is dismissed. Learned counsel for the appellant sought further continuation of the interim relief. It is refused. The amount of *mense profit* if any deposited in the Court is to be given to the plaintiff.

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

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