

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

...

CIVIL REVISION APPLICATION NO.190/2014

Ratnakanta d/o Jangulal Shroff
Age 66 years, Occ-Pensioner
r/o Nandurbar, Tq. Nandurbar
Dist.Nandurbar.

.. PETITIONER
(ORIG.PLAINTIFF)

VERSUS

1] Arun Pandharinath Sonar
Age 72 years, Occ-Nil
R/o Nandurbar, Nehru Nagar
Plot no.40, Tq. And Dist.Nandurbar

2] Bhagwan Ramchandra Marathe
Age 48 years, Occ-Agri and Business
r/o near Siddhivinayak Temple
Nandurbar, Tq. & Dist.Nandurbar.

.. RESPONDENTS
(ORIG.DEFENDANTS)

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Shri V.R.Naik, Advocate for applicant

Shri A.S.Abhyankar h/ Shri S.V.Natu, Advocate for respondent no.2.

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CORAM : T.V.NALAWADE

DATED : 26TH FEBRUARY,2016

ORAL ORDER :-

The proceeding is filed to challenge the judgment and order in Regular Civil Suit No.94/2005. The Suit filed under Section 6 of Specific Relief Act for possession by present appellant is dismissed by the trial Court. Both sides are heard.

2] Present applicant had filed the Suit in respect of one room having size 10 x 15 ft. from house property bearing C.T.S.No.1407 situated at Nandurbar. It is the case of plaintiff that her father was in possession of this room since the year 1969 and she was enjoying this property as the owner.

3] It is the case of plaintiff that Special Civil Suit No.9/1969 was filed for relief of partition against grand father of plaintiff but the father of plaintiff viz. Jangulal was not party to the said Suit. It is contended that decree for partition was given in favour of plaintiff and execution proceeding No.19/75 was filed but the decree of possession was not executed against Jangulal as Jangulal was not party to the Suit and only symbolic possession was given to the

decree holder and the execution proceeding was disposed of.

4] It is the case of plaintiff that name of the decree holder viz. Trikamlal was entered in city survey record as C.T.S.No.1407 and on that basis, Trikamdas sold the property to Dhansukhlal Shah and others on 9/6/1982. It is contended that in the said deed dated 9/6/1982 Trikamdas had specifically mentioned that father of plaintiff, viz. Jangulal was in possession of one room.

5] It is the case of plaintiff that after the death of her father, she continued to enjoy the property by keeping some articles like wooden logs and she had put her lock to the door of this room. It is contended that on 31/10/2000 Dhansukhlal Shah sold C.T.S.No.1407 to defendant no.1 Arun Sonar but intentionally it was not mentioned that one room was in the possession of plaintiff. It is contended by the plaintiff that defendant no.1 Arun took the possession of the room of plaintiff behind her back by breaking open the lock on 5/4/2005 and theft of articles which were kept by plaintiff was committed. It is contended that one sale deed is shown to be executed by defendant no.1 to defendant no.2 dated 31/3/2005. It is contended that on 6/4/2005, she came to know that the possession of the room was forcibly taken and so cause of action took place for the Suit. It is her case that on 6/4/2005, itself report was given by her to police station

against defendant nos. 1 and 2 and crime was registered for offences punishable under Sections 454 and 380 of I.P.C. against the defendants. By making aforesaid contentions she had claimed relief of possession of aforesaid room from defendant nos.1 and 2.

6] Defendant No.1 filed Written statement and he contested the matter. It is the case of defendant no.1 that he had purchased entire portion of property C.T.S.No.1407 from Dhansukhlal Shah. It is contended that at that time also plaintiff was not in possession of this room. It is contended that previous owner had informed to the tenants who were occupying remaining rooms about the transfer and then the defendant no.1 took the possession from tenants of respective rooms on 11/9/2004. It is contended that in public notice dated 8/12/2004, he had informed his intention to sell the property but no steps were taken by plaintiff to object the transaction and this circumstance shows that she was not in possession. Defendant no.1 has denied that he took the possession forcibly behind the back of plaintiff on 5/4/2005. The defendant contended that the sale deed was executed in his favour in the year 2000 and so for the purpose of Section 6 of Specific Relief Act, the Suit is not within limitation.

7] Before the trial Court, both the sides gave evidence. The evidence of plaintiff in cross examination shows that she is a married

lady and she has separate house. She gave specific admission that she and her father never lived in the Suit room though she contended that some articles were kept by her in that room. She admits that in the record of local body or other record, her name was never entered as the person in possession. She admits that defendant no.2 is in possession at present and he had taken possession from defendant no.1. It is not disputed that in criminal case filed on the basis of aforesaid allegations of plaintiff, defendant came to be acquitted.

8] Plaintiff has examined one witness Ishwar who has tried to say that on 30/3/2005, he saw that defendant no.1 was removing the articles from the suit room. He has given evidence that Jangulal father of plaintiff was in possession of this room for many years. The cross examination shows that he has no knowledge as to who were the tenants living in other rooms of the house and when they had vacated the rooms. He has no knowledge about the transactions of sale under which defendant no.1 and 2 purchased the suit properties. He had not seen the lock to the door of this room at any time. Thus, the evidence of witness of plaintiff is not that convincing to show that plaintiff or her father were in possession on 5/4/2005 or few months prior to that date.

9] Defendant no.1 has given evidence which is as per his

aforesaid contentions. He has produced relevant record to show the ownership and possession. He has given specific evidence that the possession of this room was given to him under sale deed by his vendor. The record like property card extract, voters list is produced. No record of assessment is produced by plaintiff to show that at any time, in the record of local body, plaintiff or her father was shown in possession. In voters list it is shown that they were living in different house. Copy of notice published in news paper is produced to show that defendant no.1 had published such notice on 7/12/2004. Admittedly plaintiff did not raise any objection to this transaction after publication of this notice. The sale deed executed in favour of defendant no.1 is admittedly proved and this document of year 2000 shows that the previous owner Shah had given possession of entire portion of C.T.S.No.1407.

10] One witness is examined by defendant no.1 in support of his aforesaid contentions. Thus on one hand there is convincing record with defendants to show that they were in possession of the entire portion of the house and on the other hand, except words of plaintiff, there is nothing with plaintiff to show that she was in possession in the year 2000 when defendant no.1 purchased the property from Shah. The suit was filed under Section 6 of Specific Relief Act and so conditions mentioned in Section 6 ought to have been fulfilled by the

plaintiff. In the plaint, it is contended that plaintiffs father and then plaintiff were enjoying the property as the owner. Admittedly in partition, the property had gone to the share of brother of grand father of plaintiff. If at all, there was the possession of father of plaintiff, that was permissive possession as if co-parcener or his son. Thus, there was no question of enjoying the property as the owner by plaintiff or her father. The pleading of the plaintiff shows that there was no title to either the plaintiff or her father in respect of the said room. In view of these circumstances, burden was heavy on the plaintiff to prove that she had lost possession within six months prior to the date of suit, such evidence is not there.

11] The learned counsel for respondent placed reliance on some reported cases like **(1) 2014 SAR (Civil) 33 in the case of Gurudwara Sahib Versus Gram Panchayat Village Sirthala and another; (2) AIR 1995 S.C. 1377 in the case of Nagar Palika, Jind, Versus Jagat Singh' (3) 1956 Hyderabad 170 in the case of Gokam Chinna Nagaiah Versus Nagaram Baliga and others; (4) 1971 Mh.L.J. 51 in the case of Maganlal Radia Versus State of Maharashtra and (5) AIR 1971 Punjab and Haryana 106 in the case of Ram Sarup and others Versus Puran and others.** This Court has carefully gone through facts and circumstances of the cases aforesaid. There cannot be any dispute over the propositions

made by Apex Court, this Court and other High Courts. In the first case, the Apex Court has laid down that the person who has claimed declaration on the basis of adverse possession, cannot be given relief of declaration that he has become owner due to adverse possession and said plea can be considered only by way of defence. The facts and circumstances of present case and other cases were different. In any case, in the present matter, there is nothing with the plaintiff to show that her father or she has title in respect of the room. Further, she also failed to prove that she was in possession within prescribed period mentioned in Section 6 of Specific Relief Act. This Court holds that the trial Court has not committed any error in dismissing the Suit. The present proceeding is a Revision and in such proceeding, the decision given on the basis of appreciation of the evidence which is on fact, cannot be interfered. In the result, Revision Application stands dismissed.

(T.V.NALAWADE,J.)

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