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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 385 OF 2011
WITH
CIVIL APPLICATION NO.2661 OF 2011

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|-----|--|------------|
| 1. | Sarfazuddin Sk. Ismail,
Age - 75 years, Occ - Agriculture | APPELLANTS |
| 2. | Sk. Javed Sk. Abdulla,
Age - 40 years, Occ - Agriculture | |
| 3. | Sk. Wajed Sk. Abdulla,
Age - 35 years, Occ - Agriculture | |
| 4. | Sk. Jamil Sk. Abdulla,
Age - 45 years, Occ - Agriculture | |
| 5. | Sk. Mumtajeeb Sk. Majiroddin,
Age - 60 years, Occ - Agriculture | |
| 6. | Sk. Mujaffar Sk. Najiroddin,
Age - 58 years, Occ - Agriculture | |
| 7. | Sk. Mohioddin Sk. Najiroddin,
Age - 56 years, Occ - Agriculture | |
| 8. | Sk. Feroz Sk. Najiroddin,
Age - 54 years, Occ - Agriculture | |
| 9. | Sk. Saklen Sk. Khaliloddin,
Age - 65 years, Occ - Agriculture | |
| 10. | Sk. Mokin Sk. Khaliloddin,
Age - 61 years, Occ - Agriculture | |
| 11. | Sk. Salim Sk. Khaliloddin,
Age - 61 years, Occ - Agriculture | |
| 12. | Sk. Mujammil Sk. Khaliloddin,
Age - 58 years, Occ - Agriculture | |

All R/o Neknoor,

Taluka and District - Beed

VERSUS

- | | | |
|----|--|-------------|
| 1. | Sugrabi w/o Amir Ali (Died) | RESPONDENTS |
| 2. | Taher Ali Amir Ali,
Age - 50 years, Occ - Service
as S T Driver,
R/o Neknoor, Taluka and District- Beed | |
| 3. | Mubashir Ali Ami Ali,
Age - 45 years, Occ - Driver
R/o As above | |
| 4. | Mukram Ali Amir Ali,
Age - 45 years, Occ - Service
As a Teacher,
R/o As above
At present - Khattap Mohalla,
Ambajogai, Taluka - Ambajogai,
District - Beed | |
| 5. | Mumtaj Ali Amir Ali,
Age - 34 years, Occ - Service
As a Teacher,
R/o As above,
At present Shahu Nagar, Beed
Taluka and District - Beed | |
| 6. | Muddasar Ali Taher Ali,
Age - 32 years, Occ - Education
R/o As above | |

(Respondents No.2 to 6 are legal representatives
of deceased respondent No.1)

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Mr. G. K. Thigale, Advocate for the appellants
Mr. S. S. Thombre, Advocate for respondents

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WITH**SECOND APPEAL NO. 497 OF 2010**
WITH
CIVIL APPLICATION NO.10900 OF 2010

1. Sugrabi w/o Amir Ali (Died) APPELLANTS
Through legal heris,
Appellants No.2 to 6
2. Taher Ali Amir Ali,
Age - 49 years, Occ - Service
as S T Driver,
R/o Neknoor, Taluka and District- Beed
3. Mubashir Ali Ami Ali,
Age - 44 years, Occ - Driver
R/o As above
4. Mukram Ali Amir Ali,
Age - 44 years, Occ - Service
As a Teacher,
R/o As above
At present - Khattap Mohalla,
Ambajogai, Taluka - Ambajogai,
District - Beed
5. Mumtaj Ali Amir Ali,
Age - 34 years, Occ - Service
As a Teacher,
R/o As above,
At present Shahu Nagar, Beed
Taluka and District - Beed
6. Muddasar Ali Taher Ali,
Age - 32 years, Occ - Education
R/o As above

(Respondents No.2 to 6 are legal representatives
of deceased respondent No.1)

VERSUS

RESPONDENTS

1. Sarfazuddin Sk. Ismail,
Age - 74 years, Occ – Agriculture
R/o Neknoor,
Taluka and District - Beed
2. Sk. Javed Sk. Abdulla,
Age - 40 years, Occ - Agriculture
R/o As above
3. Sk. Wajed Sk. Abdulla,
Age - 34 years, Occ – Agriculture
R/o As above
4. Sk. Jamil Sk. Abdulla,
Age - 49 years, Occ – Agriculture
R/o As above
5. Sk. Mumtajeeb Sk. Majiroddin,
Age - 59 years, Occ – Agriculture
R/o As above
6. Sk. Mujaffar Sk. Najiroddin,
Age - 57 years, Occ – Agriculture
R/o As above
7. Sk. Mohioddin Sk. Najiroddin,
Age - 54 years, Occ – Agriculture
R/o As above
8. Sk. Feroz Sk. Najiroddin,
Age - 52 years, Occ - Agriculture
R/o As above
9. Sk. Saklen Sk. Khaliloddin,
Age - 63 years, Occ – Agriculture
R/o As above
10. Sk. Mokin Sk. Khaliloddin,
Age - 59 years, Occ – Agriculture
R/o As above
11. Sk. Salim Sk. Khaliloddin,
Age - 59 years, Occ – Agriculture
R/o As above

12. Sk. Mujammil Sk. Khaliloddin,
Age - 57 years, Occ - Agriculture
R/o As above

.....
Mr. S. S. Thombre, Advocate for the appellants
Mr. G. K. Thigale , Advocate for respondents
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 1st MARCH, 2016

ORAL JUDGMENT :

1. Heard learned advocates for the parties at length. Hearing in both the appeals has simultaneously taken place.
2. Facts about which there is no dispute are that – one Hafeezuddin was original owner of property bearing then survey No.717 *admeasuring* 25 acre 29 *guntha* and that the dispute relates to an area of 5 acre 6 *guntha* from the same.
3. The plaintiffs – appellants in second appeal No.385 of 2011, instituted a suit bearing regular civil suit No.372 of 2000 seeking relief of perpetual injunction simplicitor contending that from survey No.717, an area of 5 acre 6 *guntha*, situated at village Neknoor, Taluka and District – Beed, more particularly described in the suit plaint, had been in possession of Shaikh Ismail, under an agreement of sale. Revenue record all along

depicted possession of Shaikh Ismail and thereafter of the plaintiffs. Since 1951 the plaintiffs are in peaceful possession of the suit property, without interruption. During all these years, till cause of action for the suit had arisen, defendant No.1 or for that matter Hafeezuddin during his lifetime had never asserted their ownership to the suit property by any overt act. According to the plaintiffs with the passage of time, the title of the predecessor of defendant No.1 got faded and extinguished and the same came to be acquired by the plaintiffs. The conduct of defendant No.1 is such, which shows that she had acquiesced in ownership of the plaintiffs.

4. Defendant No.1 deceased Sugrabi – descendant of Shaikh Ismail, predecessor of appellants in second appeal No.497 of 2010, resisted the suit, denying the contentions in the plaint and claimed to be in possession of the suit property and also claimed declaration of title to the suit property by filing a counter claim and further sought injunction claiming to be in possession.

5. Upon pleadings of the parties, issues, as would arise, had been framed with respect to the possession of the plaintiffs being legal, obstruction by defendants to their possession, title over the suit property of the defendants, whether the defendants

prove possession over the suit property and whether the plaintiffs and defendants are entitled to the reliefs respectively claimed by them.

6. On appreciation of the evidence, affirmative findings were given in respect of legal possession of the plaintiffs over the suit property and the obstruction at the hands of the defendants. The defendants were found to have title to the suit property. The plaintiffs were found to be entitled to injunction in respect of suit property. Whereas, defendant No.1 was found to be having title to the suit property. The relief of injunction had been refused to be granted to the defendants.

7. The matter was taken in appeals bearing regular civil appeal No.21 of 2007 at the instance of original plaintiffs and regular civil appeal No.15 of 2007 at the instance of defendant No.1. Both the appeals were heard and decided by a common judgment by dismissing the same and decree of the trial court had been confirmed.

8. The courts have referred to that the revenue record even after consolidation continued to show plaintiffs to be in possession and to be in cultivation.

9. Mr. Thigale, learned advocate appearing for the original plaintiffs – appellants in second appeal No.385 of 2011 vehemently submits that it has emerged on record in evidence that the plaintiffs have been continuously in possession of the suit property without interruption, without any assertion of title to the suit property by defendant No.1 and as such, by sheer dint of possession for a long period, the plaintiffs have acquired title over the suit property. He submits that the revenue record discloses and proves possession of the plaintiffs over the suit property. The plaintiffs had been enjoying the suit property as owners without any obstruction at the instance of the defendants. The conduct of the defendants or rather for that matter, their long silence without asserting right of ownership over the suit property is a proof of acquiescence of title by defendant No.1 in the title having acquired by the plaintiffs. He submits that mutations since 1951 till 1999 had not been objected to by the defendants. While the same was sought to be altered, cause of action had arisen and as such, the suit had been filed seeking perpetual injunction restraining the defendants from causing obstruction to plaintiffs' possession over the suit property. He submits that the plaintiffs' possession over the suit property deserves protection under section 53-A of

the Transfer of Property Act. He further goes on to contend that it shall also be deemed that the plaintiffs had acquired title by adverse possession, in absence of assertion of right by the defendants.

10. On the other hand Mr. Thombre, learned advocate appearing for the original defendants – counter claimants submits that as far as possession is concerned, revenue entries cannot be relied on and they are inconsequential. It is settled position of law that the revenue entries would seldom enable a person to acquire title to the property. He submits that as such, the revenue record is vulnerable and cannot be relied on. He submits that in the event of acceptance of the fact that the defendants have title to the suit property, it follows that possession is with the defendants. Under the circumstances, the two courts hitherto have erred in refusing to grant injunction sought under the counter claim.

11. After having heard learned advocates for the parties, substantial question of law, as far as second appeal No.385 of 2011 is concerned is -

"Whether in the peculiar facts and circumstances of the case, the defendants having not asserted their right till

the institution of the suit, it can be said that the plaintiffs had acquired title to the suit property?"

12. The answer to the above question can be found not only in the two decisions rendered by the trial as well as appellate courts, but also in the pleadings itself. The plaintiffs have proceeded on the footing that they have come in possession of the suit property under an agreement of sale and as such, their possession had been permissive.

13. Learned advocates have taken me through pleadings especially, pleadings contained in the plaint as well as in the written statement to the counter claim filed by the defendant. The pleadings unequivocally bear that it is the plaintiffs' case that they have come in possession of the suit property under an agreement of sale. There is no pleading in respect of adverse possession worth the name. As far as the case for acquiescence is concerned, the plaintiffs have not referred to any event which would show that the defendants have acquiesced in the title alleged to be acquired by plaintiffs.

14. It emerges from the record that the agreement of sale had not been produced nor any evidence in respect of the same had been laid on behalf of the plaintiffs, in order to take support of

section 53-A of the Transfer of Property Act. Nor any effort was made in this respect. In the circumstances, having come to the court with a case that the plaintiffs had been in possession under an agreement of sale, would not be allowed to volte-face and say that they have acquired title by adverse possession or for that matter in the absence of indication by the defendants that there has been acquiescence in the alleged title as claimed by the plaintiffs. In the process, merely long standing possession would not be able to extinguish title of the defendants. As a matter of fact, in the course of submissions, it has been adverted to that from the very same survey number, the defendants had dealt with the property which had been descended on to them from Hafeezoddin. Thus, the situation emerges that the title of the predecessor of the defendants has been accepted and that the courts have referred to that by inheritance, the property devolved on defendant No.1.

15. Under the circumstances, the question, as referred to herein above stands answered in the negative having regard to that both the courts have extensively dealt with the evidence on record and its appreciation is not liable to be faulted with on any count. Second appeal No.385 of 2011 as such, fails.

16. As far as second appeal No.497 of 2010 is concerned, Mr. Thombre, learned advocate had strenuously urged to hold defendant No.1 to be in possession on the basis of title with reference to cancellation of mutation entries. However, both the courts have elaborately discussed the evidence on record and found the plaintiffs to be in possession of the suit property. Said findings can seldom be referred to as perverse or without any foundation in evidence. In the circumstances, second appeal No.497 of 2010, which primarily raises question of facts is not liable to be entertained and the same stands dismissed.

17. In view of disposal of second appeals, pending civil applications do not survive and stand disposed of accordingly.

[SUNIL P. DESHMUKH, J.]