

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

906 SECOND APPEAL NO. 555 OF 2013
WITH CA/10412/2013 IN SA/555/2013

KALABAI MAHADU KOLI
VERSUS
DEVIDAS BABURAO KOMTI (BHINGARE) AND OTHERS

...
Advocate for Appellant : Deshmukh R.M.
Advocate for Respondents 1 to 5 : S.P. Shah
...

CORAM : T.V. NALAWADE, J.
DATED : 8th July, 2016.

ORDER :

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No. 118/2001, which was pending in the Court of Civil Judge, Junior Division, Parola and also to challenge the judgment and decree of Regular Civil Appeal No. 55/2008, which was pending in the District Court, Amalner. The suit was filed for removal of encroachment and for possession by present respondents and it is decided in their favour. Both the sides are heard.

2. The suit was filed in respect of 48.9 Sq. Mtr. portion, which is southern part of property bearing C.T.S. No. 5021. The total area of this property is 97.9 Sq. Mtr. and it is situated within limits of Parola Municipality. It is the case of plaintiffs that their

father Baburao Komti alias Bhingare was owner of this property and so, they are entitled to get this property. Baburao died on 12.8.1991.

3. It is the case of plaintiffs that in April 1992, when plaintiffs visited the suit property, they noticed that some portion was encroached by defendant and on other portion of C.T.S. No. 5021, one Shaikh Abdul had made construction. It is contended that on 15.9.1992 complaint was given to Local Body to remove the illegal construction, but no action was taken by Municipal Council. It is contended that as defendant refused to hand over the possession and remove the construction, the suit was required to be filed.

4. Defendant filed written statement and contested the matter. She took the defence that she purchased the property from plaintiffs', predecessor Baburao for the consideration of Rs. 99/- under oral transaction. It is contended that she initially made construction of hut and then she made construction of permanent nature and she has been in possession of the property since the year 1977. It is her case that she is in possession as owner though her name is not entered in any record to that effect.

4. Issues were framed on the basis of aforesaid pleadings. Issue of ownership due to adverse possession was also framed. Both the sides gave evidence.

5. The Courts below have considered both oral and documentary evidence. It is not disputed by defendant that on record and since many years, plaintiffs were owners of the suit property. To prove the case of sale of the property by Baburao, the defendant has only oral evidence. It can be said that the price is mentioned as Rs. 99/- to avoid rigour of law of registration as there is no record at all with the defendant to show that there was any transaction made in her favour by anybody.

6. In view of the aforesaid circumstances, it was necessary for the defendant to prove her ownership due to adverse possession. On that also, there is only oral evidence. First time in the year 1993, defendant's name was entered in the assessment record, but the name of plaintiff was also there and for some time, plaintiff had also paid the assessment. The plaintiff's name was continued as owner even up to the year 1999-2000 till the date of the suit. There is one receipt with

defendant of year 1999 to show that she paid the assessment for one year. She never applied to Local Body or City Survey Office to enter her name in the record of rights or in assessment record. Civil matters are required to be decided on preponderance of probability. In view of the aforesaid circumstances, the Courts below have held that defendant has failed to prove her ownership under oral sale transaction and also the ownership due to adverse possession. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application is disposed of.

[T.V. NALAWADE, J.]

ssc/