

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

*SECOND APPEAL NO. 298 OF 2016
with
CIVIL APPLICATION NO. 559 OF 2016*

Mr. Chandar Dattu Chougule. ... Appellant/Applicant.

V/s.

Mr. Ramchandra Baburao Bhanage
Since deceased through heirs. ... Respondents.

Mr. P.M. Arjunwadkar for the Appellant/Applicant.
Mr. Chetan Patil for Respondent 1-A, 1-B, 1-C, 1-D, 1-E.

CORAM : N.M. Jamdar, J.

13 April, 2016.

P.C. :-

The Appellant, who is the Original Defendant No.1 in the Suit No. 39 of 2002 filed by the Respondents – Plaintiffs has challenged the concurrent Judgments and decrees of the Joint Civil Judge, Junior Division, Panhala and the District Judge, Kolhapur, decreeing the Suit filed by the Respondents – Plaintiffs. The Courts declared that the Appellant has no right in the Suit property and the entry of the Appellant as a owner in the property records, is illegal.

2. The Suit was filed for recovery of possession of a structure admeasuring 32' x 35'. The Appellant took up a defence that the Appellant has become owner by virtue of adverse possession not only of the suit structure but of the land surrounding it. Both the Courts have negated the case of the Appellant.

3. The learned Counsel for the Appellant submitted that as regard the entry in the revenue record there exist since 1951-52 and no objection is taken by the Respondents – Plaintiffs. The learned Counsel for the Respondents – Plaintiffs has controverted this assertion.

4. The main ingredient for establishing adverse possession, is that the possession should be hostile to the true owner for the stipulated period. The Appellant has in clear term admitted the ownership of the Respondents – Plaintiffs but has set up a title by adverse possession. In the cross-examination, the Appellant has admitted that till the year 1995 there was no dispute between the Appellant and the Respondents – Plaintiffs in respect of the structure and it is only after the flour mill, which was carried on in the suit structure was closed in the year 1995, that the dispute arose. It was admitted that when the entries were made, no notice was given to the Respondents – Plaintiffs. Once it is admitted by the Appellant that there was no dispute till the year 1995 and the Suit was filed in the year 2002, ingredients for establishing title by adverse possession were not fulfilled.

5. No error is committed by both the Courts negating the assertion of the Appellant regarding ownership by adverse possession of the land also. Though it is not the subject matter of the suit, the Appellant invoked the issue for the land also. The evidence produced on record by the Appellant and his cross-examination shows that he has not acquired any title by adverse possession in respect of the land as well.

6. No substantial question of law arises. The Second Appeal is dismissed. The Civil Application stands disposed of.

(N.M. Jamdar, J.)