

Sequeira

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

***SECOND APPEAL NO. 598 OF 2014
Along with
CIVIL APPLICATION NO. 1533 OF 2013
(For stay)
Along with
SECOND APPEAL NO. 599 OF 2014
Along with
CIVIL APPLICATION NO. 1536 OF 2014
(For stay)***

Shri Bhavarilal Jugraj Phulphagar.

... Appellant

V/s.

Smt.Gendabai Dhulchand

Phulphagar & ors.

... Respondents.

Mr.S.R.Nargolkar a/w Mr.Tejas Dande and Mr.Bharat Gadhavi, for Appellant in both Appeals and Applicant in both Applications.

Mr.Vaibhav Sugdare i/b N.S.Sanklecha & Associates, for Respondent No.3 in S.A. No.598 of 2014.

***Coram : N.M. Jamdar, J.
Tuesday 28 June, 2016.***

Oral Order. :-

These two Appeals are argued together and are being disposed of by this common order.

2. The Second Appeal No.598 of 2014 challenges the Judgment and Order passed by the learned Civil Judge, Senior Division, Pune

in Regular Civil Suit No.158 of 1999 and Order passed by the District Judge, Pune dated 15 June 2012 in Civil Appeal No.387 of 2007. The Second Appeal No.599 of 2014 challenges the Judgment and Order passed by learned Civil Judge, Senior Division in Special Civil Suit No.1020 of 1992 and order passed by the District Judge, Pune on 15 June 2012 in Civil Appeal No.716 of 2007.

3. The Respondents filed Regular Civil Suit No.158 of 1999 renumbered Regular Civil Suit No.153 of 1989, for injunction and declaration that the Appellant has no right to the suit property. The Special Civil Suit No.1020 of 1992 was filed by the Appellant for declaration that the Sale deed dated 13 November 1943 relied upon by the Respondents is bogus and the Respondents derive no title therefrom. The Appellant also took up a plea of adverse possession.

4. The learned Civil Judge heard both the suits together and decreed the Suit filed by the Respondents and dismissed the Suit filed by the Appellant. Two Appeals were filed by the Appellant in the District Court Pune, which were dismissed by the common Judgment and Order passed by the learned District Court.

5. The learned counsel for the Appellant submitted that the Respondents have failed to show their title to the suit property. He submitted that the Appellant was owner of the property, as a

mortgage was executed in respect of the property in favour of the grandfather of the Appellant, which was never redeemed. He submitted that the boundaries in the Sale deed do not tally with the suit property. The learned counsel for the Appellant submitted that on these aspects the finding of both the Courts is perverse. The learned counsel for the Appellant also submitted that, in the alternate, the plea of adverse possession ought to have been accepted, as from atleast from 1957 the Appellant, with full knowledge of the Respondents, is in possession of the suit property.

6. The crucial issue therefore, is whether the Appellant or Respondents have demonstrated their title to the suit property. As far as the case of the Appellant regarding mortgage is concerned, both the learned District Court and the trial Court have considered this contention. The mortgage deed was not duly proved. The mortgage deed was stated to be executed in Modi language and translated, but the translator was not examined. No application for secondary evidence was led and therefore, both the Courts have rightly refused to rely upon this claim of the Appellant based on mortgage deed. As far as the claim of the Respondents, both the Courts have taken note of the fact that the document dated 17 October 1943 was executed by the father of the Appellant in favour of one Mr.Sopan Bhiva Mali who in turn executed sale deed dated 13 November 1943 which is questioned by the Appellant. These

documents being 30 year old and brought from the custody of the proper person have rightly been accepted by both the courts. The Appellant came with a simplistic case that the Respondents are not the owners of the property. There was no reference to the deed executed by the father of the Appellant in favour of Sopan Bhiva Mali. Therefore on the basis of pleadings and evidence and on the basis of these two proved documents, there is no error committed by both the Courts to conclude that the Respondents proved their ownership. Once ownership was established there was no error in refusing to grant declaration in favour of the Appellant and as the Respondents demonstrated that they are the owners of the property, decreeing the suit of the Respondents.

7. As regards the contention of the Appellant that boundaries in the Sale deed and the suit property did not tally, it has to be noted that in the Suit filed by the Respondents, the Appellant has admitted that the Municipal House No.442, which is referred to in the deed is the same property. The appellate Court has also taken note that the Suit is instituted by the Appellant for a declaration that the sale deed is nominal thereby accepting the boundaries. The learned counsel for the Respondents pointed out that even though the District Court has discussed this contention, which was advanced in the oral arguments, it was not taken in the appeal memo before the District Court. It was also not the case of the Appellant that the two documents of the

year 1943 were executed however, the boundaries were not correct. These two deeds, one of them executed by the father of the Appellant, were suppressed from the Court. The argument of boundaries not tallying is being put forth after the suppression is brought out.

8. As regards the plea of adverse possession, the first overt act is of the year 1989. Thereafter both the parties from the year 1992 onwards are litigating against each other. It is clear that mere permissive possession will not lead to adverse possession and the period of limitation would commence from assertion of hostile title. In view of the above circumstances, the plea of adverse permission has rightly been discarded by both the Courts. No question of law arises, much less any substantial question of law. Both the Appeals accordingly dismissed.

9. The Civil Applications stand disposed of accordingly.

(N.M. Jamdar, J.)