

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

**SECOND APPEAL NO.499 OF 2014
ALONG WITH
CIVIL APPLICATION NO.1172 OF 2014**

Hanmant Appa Shinde .. Appellant
Vs.
Bhagwan Jagannath Shinde & Ors. .. Respondents

Mr.Chandrakant N.Chavan for Appellant.
Mr.Vijay Killedar for Respondent nos.1 & 2.

CORAM : R.D. DHANUKA, J.
DATE : 10th October 2016

P.C.

. By this appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant no.1) has impugned the judgment and order dated 15th April 2014 passed by the learned Principal District Judge, Satara allowing the Regular Civil Appeal No.181 of 2007 filed by the respondent nos.1 & 2 (original plaintiffs) and dismissing the cross-objection filed by the appellant. In the said Regular Civil Appeal No.181 of 2007, the original plaintiffs had impugned the judgment and decree passed by the learned trial Judge on 25th April 2007 dismissing the suit inter alia praying for possession and for mesne profits.

2. It is the case of the plaintiffs that they are the owners of the land bearing old Survey No.324/1 of village Songaon, Taluka and District Satara (bearing Gat No.1115) admeasuring 34 Ares and that the defendants are the owners of the land old Survey No.324/2 having Gat No.1116 admeasuring 14 Ares which was adjacent to the property of the

plaintiffs from eastern side. Out of 14 Ares of the land, 10 Ares portion of the land of the defendants was acquired by Indian Railways and the defendants got the compensation in respect of those 10 Ares land from the Indian Railways. Only a portion of the land of 4 Ares remained with the defendants.

3. It is the case of the plaintiffs that since in the year 2002, the defendants started claiming the land bearing Gat no.1115 i.e.old Survey No.324/1 which was owned by the plaintiffs and started obstructing their possession, the suit was filed by the plaintiffs for possession and for mesne profits. The said suit was resisted by the defendants by filing a written statement. It is the case of the defendants that the suit property was not owned by the plaintiffs and they came in possession by dispossessing the defendants.

4. Learned trial Judge framed various issues and dismissed the suit filed by the plaintiffs.

5. Being aggrieved by the said judgment and decree dated 25th April 2007 passed by the learned trial Judge in Regular Civil Suit No.318 of 2004, the defendants filed cross-objection under Order XLI Rule 22 of the Code of Civil Procedure, 1908 and raised an issue of limitation. The plaintiffs filed an appeal (Regular Civil Appeal No.181 of 2007).

6. By a common judgment and decree dated 15th April 2014, the first appellate Court allowed the Regular Civil Appeal No.181 of 2007 filed by the plaintiffs and dismissed the cross-objection. The first appellate Court decreed the suit filed by the plaintiffs and directed the

defendants to deliver vacant possession of the suit property to the plaintiffs and also ordered an enquiry for mesne profits under Order XX Rule 12(1)(c) of the Code of Civil Procedure, 1908.

7. Mr.Chavan, learned counsel appearing for the defendants invited my attention to some of the findings rendered by the learned trial Judge and also the findings rendered by the first appellate Court. He submits that the findings rendered by the learned trial Judge were correctly recorded after considering the evidence led by both the parties and thus the first appellate Court could not have reversed these findings without any basis.

8. It is submitted by the learned counsel that the plaintiffs had not produced documentary evidence in support of their claim of ownership in respect of land bearing old Survey No.324/1. He submits that the entire judgment and decree of the first appellate Court is based on no evidence.

9. It is submitted by the learned counsel for the defendants that though the notices were received from Indian Railways by the plaintiffs for acquisition of the suit property in the year 1961 under Section 4(1) of the Land Acquisition Act, 1894, the plaintiffs filed a suit for possession only in the year 2004 and though the suit was ex facie barred by law of limitation, the first appellate Court rejected the plea of limitation raised by the defendants.

10. Mr.Killedar, learned counsel appearing for the plaintiffs, on the other hand, invited my attention to various findings rendered by the

first appellate Court. He submits that the first appellate Court has not rendered a finding of possession in favour of the plaintiffs in respect of land old Survey No.324/1 without any evidence but has considered the oral and documentary evidence examined by the plaintiffs. He submits that admittedly, the plaintiffs had received compensation from the Indian Railways in respect of part of acquisition of the said plot bearing old Survey No.324/1 which belonged to the plaintiffs whereas the defendants had received compensation from the Indian Railways in respect of part of acquisition of the said plot bearing old Survey No.324/2 admeasuring 14 Ares out of 10 Ares which was acquired.

11. It is submitted by the learned counsel that instead of the defendants examining themselves, had examined the constituted attorney who had no personal knowledge in respect of the facts of the case. He submits that the first appellate Court has considered the oral and documentary evidence in right perspective and had rightly rendered a finding of ownership in respect of the suit property in favour of the plaintiffs.

12. In so far as the issue of limitation raised by the defendants in the cross-objection is concerned, Mr.Killedar, learned counsel for the plaintiffs invited my attention to paragraph 23 of the judgment and decree passed by the first appellate Court and would submit that though the defendants had initially pleaded adverse possession and had claimed title by adverse possession, during the course of hearing, the defendants had waived the said plea and did not lead any evidence in respect of such plea. He submits that the first appellate Court has rightly rejected

the plea of limitation raised by the defendants on the ground that they had been enjoying possession of the suit property and had failed to establish their adverse possession as contemplated under Article 65 of the Limitation Act, 1963.

13. A perusal of the impugned judgment and decree passed by the first appellate Court indicates that the first appellate Court has considered the admitted position before the trial Court that the plaintiffs had been paid compensation by the Indian Railways in respect of part of the land acquired bearing old Survey No.324/1 whereas the defendants who were owners of the land bearing old Survey No.324/2 had been paid compensation for 10 Ares of the land acquired by the Indian Railways.

14. It is not the case of the defendants that they were wrongly paid compensation by the Indian Railways in respect of the plot bearing old Survey No.324/2 though they were not the actual owners of the said property. It is not the case of the plaintiffs that though the plaintiffs were not the actual owners of the land bearing old Survey no.324/1, Indian Railways had wrongly paid compensation in respect of the part of the said property acquired by the Indian Railways.

15. A perusal of the impugned judgment and decree passed by the first appellate Court indicates that the first appellate Court has considered the oral evidence led by both the parties in a great detail in the impugned judgment and decree. The first appellate Court has rightly discarded the evidence led by the defendants who had examined the

constituted attorney who had no personal knowledge in respect of the dispute. Admittedly the defendants did not enter into the witness box. The first appellate Court has rightly considered that it was very difficult to trace the source of acquisition of the ancestors of the property and thus considered the oral evidence and other surrounding circumstances.

16. In so far as the issue of limitation raised by the defendants is concerned, a perusal of paragraph 23 of the judgment and decree passed by the first appellate Court indicates that though the defendants had initially claimed title by adverse possession, the said plea was given up and no evidence to prove the title by adverse possession by the defendants was led. In my view, the first appellate Court thus rightly rejected the plea of limitation raised in the cross-objection on the ground that unless the defendants had established their adverse possession as contemplated under Article 65 of the Limitation Act, 1963, the question of commencement of limitation did not arise.

17. In my view, the first appellate Court has rightly considered the entire oral as well as documentary evidence in right perspective and has rightly interfered with the impugned judgment and decree passed by the learned trial Judge. The findings rendered by the first appellate Court are not perverse and thus cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908.

18. In my view, there is no substantial question of law arises in this appeal. Appeal is devoid of merit and is accordingly dismissed. In view of dismissal of the appeal, civil application does not survive and is accordingly dismissed. No order as to costs.

19. At this stage, Mr.Chavan, learned counsel for the appellants seeks continuation of the ad-interim order passed by this Court for a period of eight weeks from today. Ad-interim order passed by this Court to continue for a period eight weeks from today. The appellants shall file an undertaking before this Court within two weeks from today that during this period of eight weeks, the appellants will not create any third party rights in respect of the suit property and shall not part with possession thereof subject to the order of the Supreme Court. A copy of such undertaking shall be served upon the respondents' advocate to this appeal simultaneously.

R.D. DHANUKA, J.