

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 739 OF 2014

Shri. Nabhiraj @ Nabhu Anna Chougule	...Appellant
<i>Versus</i>	
Collector Kolhapur & Ors	...Respondents

Mr. Sandeep Koregave, for the Appellant.

Mr. Girish Paryani, for the Respondents No. 6 to 8, 9A to 9E.

CORAM : R.D. DHANUKA, J.
DATE : 21st November 2016

ORDER :

1. By this Appeal under Section 100 of the Code of Civil Procedure, 1908, the Appellant (original Plaintiff) has impugned the judgment and decree dated 2nd May 2014 passed by the learned District Judge -2, Kolhapur dismissing the Regular Civil Appeal No. 242 of 2007 filed by the Appellant wherein the Appellant had impugned the judgment and decree dated 20th August 2007 passed by the learned Trial Judge dismissing the Suit No. 971 of 2000 filed by the Appellant praying for declaration and possession of the Suit

property.

2. It was the case of the Plaintiff that the suit property was owned by the predecessor-in-title of the Plaintiff and it was in possession and occupation of one Mr. Omannanarasu Chougule. The name of the predecessor-in-title of the Plaintiff was entered in the record of rights in respect of the suit property. It was the case of the Plaintiff that the name of Government park was recorded in the record of the suit property without intimation to the Plaintiff. It was the case of the Plaintiff that the Defendants No. 1 to 5 has no right, title and interest in the suit land. The Plaintiff accordingly, filed the suit for declaration and possession of the suit land.

3. The Suit was resisted by the Defendants No. 1 to 5 by filing the Written Statement. They denied the claim of the ownership of the Plaintiff in the suit land and contended that the suit property was situated within the limits of village Waliwade which was Inam property. The entire property was owned by Shri. Chhatrapati Maharaj of Kolhapur District. It was the case of the Defendants No. 1 to 5 that the name of Maharaj Hasanand was recorded in tenancy column of the suit land in the year 1960-61 and thereafter, the suit property was continuously in possession of the legal heirs of the said

Hasanand. It was the case of the Defendants No. 1 to 5 that the suit property originally belonged to Kolhapur State. After merger of Kolhapur, the suit property became the property of the State of Maharashtra.

4. The State of Maharashtra gave the suit land to Hasanand Jethanand Aacharya as a tenant on 14th May 1960. The Writ Petition No. 3519 of 1989 was filed in this Court in respect of the suit property. This Court directed the Government and accordingly, Government confirmed the order dated 8th August 1979 and accordingly, permission for transfer of the property in favour of the said Hasanand Jethanand Aacharya was granted. It was the case of the Defendants that the Defendants No. 1 to 5 were in possession of the suit property since 1960.

5. The learned trial Judge framed the issue of limitation in view of the contention raised by the Defendants that the suit filed by the Plaintiff was hopelessly barred by limitation. The learned trial Judge considered the said issue as preliminary issue and by the judgment and decree dated 20th August 2007 dismissed the Suit on the ground of limitation. The learned trial Judge held that the Suit land came to be allotted to the Defendants' father on the basis of

ownership on 8th August 1979 whereas the Suit was filed in the year 2000 and thus, barred by law of limitation.

6. The learned Ad-hoc District Judge -2 formulated the points as to whether the Suit filed by the Plaintiff is barred by law of limitation and answered the said issue in the affirmative. By the judgment and decree dated 2nd May 2014, the Appeal filed by the Plaintiff impugning the order dated 20th August 2007 came to be dismissed. The said judgment and decree is impugned by the Plaintiff in this Second Appeal.

7. The learned Counsel for the Plaintiff submits that the cause of action for filing the Suit would commence not when the Government transferred the suit land in favour of the predecessor-in-title of the Defendants, but would arise when the said order was confirmed on 5th December 1997 by the Revenue Commissioner and thereafter by the learned Minister.

8. The learned Counsel appearing for the Respondents/original Defendants on the other hand invited my attention to the findings of the facts on the issue of limitation. He submits that the predecessor-in-title of the Defendants were in possession continuously since 1960. He submits that both the Courts

below have rightly considered the documentary evidence and have rightly rendered that the suit filed by the Plaintiff was hopelessly barred by limitation.

9. The Plaintiff is not admittedly in possession of the suit property. A perusal of the averments made in the Plaint to which my attention was invited by the learned Counsel for the Plaintiff himself clearly indicates that no averments were made in the Plaint regarding alleged knowledge of the Plaintiff about the title of the Defendants in respect of the suit property.

10. Two Courts below have rendered the findings that predecessor-in-title of the Defendants were in possession in respect of the suit land since 1960. The findings of facts recorded by two Courts below, being concurrent findings and not being perverse cannot be interfered with by this Court in this Second Appeal.

11. Insofar as the submission of the learned Counsel for the Plaintiff that the limitation would commence from the date of confirmation of the order passed by the Appellate Authority or by the Minister is concerned, in my view, there is no substance in this submission. The Plaintiff was fully aware of the first order. The cause of action had commenced from the date of the said order and not

from the final order passed by the learned Minister.

12. In my view, there is no substance in this Second Appeal and the same is devoid of merits. I therefore, pass the following order:-

- (i) The Second Appeal is dismissed.
- (ii) No order as to costs.

[R.D. DHANUKA, J.]