

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

SECOND APPEAL NO. 654 OF 2013

WITH

CIVIL APPLICATION NO. 1574 OF 2013

IN

SECOND APPEAL NO. 654 OF 2013

Eknath Dadu Patil & Ors.

...Appellants

Versus

Sakharam Dattu Patil & Ors.

...Respondents

Mr. Tejpal Ingale, Mr. Nagesh Y. Chavan, for the Appellants.

None for the Respondents.

CORAM : R.D. DHANUKA, J.

DATE : 21st November 2016

ORDER :

1. By this Appeal the Appellants (original Defendants) have impugned the judgment and decree dated 17th July 2013 passed by the learned District Judge -2, Sangli, dismissing the Regular Civil Appeal No. 138 of 2005 filed by the Appellants thereby impugning the judgment and decree passed by the learned Trial Judge in

Regular Civil Suit No. 68 of 1993 along with the said Suit filed by the Respondents (original Plaintiffs) *inter alia* praying for possession of the portion admeasuring 16 gunthas and for perpetual injunction. Some of the relevant facts for deciding this Second Appeal are as under :-

2. The Plaintiffs are the owners and in possession of Gat No. 219. The Defendants were not concerned with the said land bearing Gat No. 219. It was the case of the Plaintiffs that prior to two or three years of filing of the Suit, the Defendants had erected a pipeline and stopped it on the suit land. The Defendant No. 1 also constructed a chamber by taking advantage of the fact of absence of the Plaintiffs. According to the Plaintiffs, the Defendants had committed encroachment of 16 gunthas area in the suit land. The Plaintiffs thereafter got the suit land measured on 21st January 1993 and came to know about extent of encroachment of 16 gunthas. The Plaintiffs accordingly, filed the Suit for possession of the encroached portion and for perpetual injunction.

3. The Defendants No. 1 to 5 filed a common Written Statement and denied the averments made by the Plaintiffs in the Plaint. It was the case of the Defendants that since beginning there

was a road in existence upon the suit land and that the Defendants were in possession of the portion of the suit land.

4. The learned Trial Judge framed several issues for adjudication. The Plaintiffs examined one of the Plaintiffs and also examined Dattatray Ramu Shende, who was the Cadestral Surveyor. The witness examined by the Plaintiffs were cross examined by the Defendants. The Defendants also led oral evidence. By a judgment and decree dated 20th June 2005 the learned Trial Judge decreed the said Suit and directed the Defendants to handover the suit land i.e. 16 gunthas to the Plaintiffs within one month from the date of the decree and also granted perpetual injunction.

5. Being aggrieved by the said judgment dated 20th June 2005 passed by the learned Trial Judge, the Defendants preferred an Appeal (Regular Civil Appeal No. 138 of 2005). The learned District Judge -2, Sangli passed the judgment and decree on 17th July 2013 thereby dismissing the Appeal filed by the Defendants. The learned District Judge formulated seven points for determination and after considering the documentary and oral evidence, dismissed the said Appeal. This judgment and decree passed by the learned District Judge on 17th July 2013 is impugned by the Defendants in this

Second Appeal.

6. The learned Counsel appearing for the Defendants invited my attention to the three paragraphs of the Written Statement filed by the Defendants and would submit that though the Defendants had raised the plea for adverse possession before the learned Trial Judge, the learned Trial Judge did not frame issues regarding adverse possession.

7. The learned Counsel also invited my attention to the cross-examination of the surveyor who was examined as one of the witness by the Plaintiffs. He submits that the Defendants were in possession for more than 12 years which was adverse to the title of the Plaintiff and thus, the Suit ought to have been filed within 12 years in view of the Article 65 of the Limitation Act, 1963. He submits that though the Suit was barred by law of limitation, the learned Trial Judge passed a decree in favour of the Plaintiffs instead of dismissing the Suit as time barred.

8. A perusal of the judgment and decree passed by the learned Trial Judge indicates that the ownership of the Plaintiff Sakharam Dattu Patil was nowhere challenged by the Defendants in the cross-examination of the witness examined by the Plaintiffs. The

Defendant Ramchandra Patil also in his cross-examination specifically admitted that the Plaintiffs were the owners and were in possession of the Gat No. 219. The Plaintiffs Sakharam had specifically deposed that the Defendants had committed encroachment in respect of 16 gunthas area, which deposition remained unchallenged in cross-examination. The learned Trial Judge also considered the evidence of the cadestral surveyor who was one of the witness examined by the Plaintiffs, who had deposed that during the major work, it was noticed that the Defendants had committed encroachment to the extent of 16 gunthas. The said deposition of the said surveyor remained unchallenged in his cross-examination.

9. The learned Trial Judge also considered the oral evidence of the Defendants who could not establish that they were in possession of the suit property since the time of their forefathers. The learned Trial Judge accordingly after considering the documentary and oral evidence rendered the findings that the Defendants were in possession over the 16 gunthas area as an encroachers.

10. Insofar as the judgment and decree of the first Appellate Court is concerned, a perusal of the said judgment and

decree shows that the learned District Judge has formulated several points for determination. The first Appellate Court also considered the plea of adverse possession made by the Defendants in the Written Statement and after considering the oral and documentary evidence has rendered a finding that the Defendants had failed to prove the adverse possession.

11. Insofar as the issue of limitation raised by the learned Counsel for the Defendants is concerned, both the Courts below have considered the issue of limitation in detail in the judgment and decree passed by the Courts below and found that the Defendants having not proved their possession for more than 12 years, Suit was within time.

12. In my view, there is thus, no substance in the submissions made by the learned Counsel for the Defendants that two Courts below did not consider the plea of adverse possession raised by the Defendants in the Written Statement. In my view, since the Defendants could not demonstrate and prove the period since when they were in possession, the learned Trial Judge as well as first Appellate Court rightly rejected the plea of limitation raised by the Defendants. Findings recorded by the two Courts below are rendered

after considering the documentary and oral evidence led by both the parties and being concurrent and not being perverse, cannot be interfered by this Court in this Second Appeal. No substantial question of law arises in this Second Appeal.

13. In my view, the Second Appeal is devoid of merit. I therefore, pass the following order:-

- (i) The Second Appeal is dismissed.
- (ii) No order as to costs.
- (iii) In view of dismissal of this Second Appeal, the Civil Application No. 1574 of 2013 does not survive and is accordingly, dismissed.

[R.D. DHANUKA, J.]