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

*SECOND APPEAL NO. 332 OF 2016
with
CIVIL APPLICATION NO. 193 OF 2016*

Mr. Prakash Babu Bhingare & Ors. ... Appellants/Applicants.

V/s.

Narayan Vishwnath Deshpande & Ors. ... Respondents.

Mr. Chetan Damre for the Appellants/Applicants.

Mr. Nikhil Wadikar i/b. Nandu Pawar for Respondent 1 to 9.

CORAM : N.M. Jamdar, J.

03 May, 2016.

Oral Order :-

It is informed that the Appellant No.9 has expired. The learned Counsel for the Appellants states that her heirs are already on record as Appellant Nos.1,6,7 and 8. He submits that the Appellant No. 10 - Shantabai Ambu Wadekar has not been made party through oversight.

2. Leave to add the Appellant No.10 and delete the Appellant No.9 granted. Amendment to be carried out forthwith.

3. The Appellants challenge the judgment and order passed by the District Judge, Satara on 20 August 2014 allowing the Appeal and decreeing the Suit setting aside the judgment and order passed by the Civil Judge, Senior Division, Satara dismissing the Suit of the Respondents.

4. The Respondents filed a Suit No.179 of 2004 in the Court of Civil Judge, Senior Division, Satara for mandatory injunction and possession of the suit property from the Appellants. The Suit was filed on the basis of the title of the Respondents to the suit property. The Suit was resisted by the Appellants primarily on the ground that the Respondents cannot recovery possession of suit property from the Appellants since the Appellants are in adverse possession since the year 1988, by virtue of Article 65 of the Limitation Act 1963. The learned Civil Judge held that the Appellants cannot claim adverse possession however dismissed the suit on the ground that the Respondents were not in possession of the suit property prior to 12 years of the date of filing the suit. An appeal was filed by the Respondents in the District Court, Satara. The learned District Judge held that the conclusion of the learned Civil Judge was incorrect as the Suit was based on title and not on dispossession. The learned District Judge also held that the Appellants' possession was not an adverse possession. Accordingly, the learned District Judge by impugned judgment and order decreed the Suit.

5. The learned Counsel for the Appellants submitted that the Appellants are in possession since the year 1988 and not since 2001 as

sought to be contended by the Respondent. He submitted that since the Appellants are in possession since 1988, the Respondents were not entitled to recover possession. He submitted that the possession of the Appellants, since the year 1988, was with full knowledge of the Respondents. He also relied upon the decisions of the Supreme Court in the case of *Shyam Sunder Prasad v/s. Raj Pal Singh [(1995) 1 SCC 311]* and *Smt. Raj Rani v/s. Kailash Chand [AIR (1977) SC 1123]*.

6. The Suit was filed by the Respondents on the basis of title. There is no dispute as regard the title of the Respondents to the property and both the Courts have upheld the same. To Suit is based on title for recovery of possession, the defence of the Appellants is of adverse possession. It is settled law that merely because a defendant is in possession of the property for more than 12 years, the possession does not become adverse and there has to be an animus to hold the property with hostility. The learned Civil Judge had accepted the contention of the Appellants only on the ground of possession, without considering as to whether the Appellants had duly proved their animus to hold the property with hostility. The learned District Judge has rightly considered that this fact being within the knowledge of the person claiming an adverse possession, the best person to depose is the defendant. The Appellants deposed through a Power of Attorney and examined one Sarpanch. The Sarpanch only stated the fact about possession.

7. The District Court also took note of the fact that a complaint was filed by the Appellants in the year 2000 against the Respondents and

thereafter, the Suit was filed in the year 2004. Considering the evidence placed on record, the learned District Judge has recorded a finding of fact that the possession of the Appellants was not with animus to hold the property with hostility for more than 12 years. The learned District Judge has rightly corrected the approach of the learned Civil Judge in dismissing the Suit only on the ground of simplicitor possession of the Appellants. As regard the case law cited by the learned Counsel for the Appellants, it is under the Act of 1908 and as the learned District Judge rightly pointed out that there is a distinction between Articles 142 and 148 of the Act of 1908 and Articles 64 and 65 of the Act of 1963.

8. No question of law arises in this Second Appeal. The Appeal is accordingly dismissed. The Civil Application stands disposed of accordingly.

(N.M. Jamdar, J.)