

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 1960 OF 2006**

Ramjas Ramraj Updhyay	.. Plaintiff
Vs.	
Life Insurance Corpn.	.. Defendant

Mr. Yogeshwar S. Bhate for plaintiff.

Ms. Rupa Bhawe i/b Bhawe & Co. for defendant.

**CORAM : K.R. SHRIRAM, J.
DATE : 16TH MARCH, 2016**

P.C.

1 Prayer clauses (a) and (b) of the suit read as under :

(a) that it be declared that plaintiff is owner of suit property being land bearing CTS No.1446 (part), Eksar Village, Borivali (West), Mumbai admeasuring 1905.41 sq.mtrs. described in Schedule-Exh.'A' to the plaint;

(b) That for the purpose of aforesaid, defendant may be ordered and decreed to do all such deeds and things as may be necessary and to execute all necessary deeds, agreements and writings for effectively transferring the suit property described in prayer (a) above to the name of the plaintiff.

In paragraph 2 of the plaint, the plaintiff admits that the plaintiff has encroached upon and started using and occupying the suit land and the basis of the suit is for declaration as owner by way of adverse possession. It is settled law that such a suit is not maintainable.

2 When this Court brought to the notice of the counsel for the plaintiff the judgement of the Apex Court in ***Gurudwara Sahib Vs. Gram***

Panchayat Village Sirthala & Anr.¹, the counsel for the plaintiff, in fairness, concurred that such a suit for the reliefs being sought is not maintainable. The matter was stood over by one week and today, the counsel, on instructions from the plaintiff, seeks leave to withdraw the suit. At the same time, the counsel submits that his rights should be protected and he should be allowed to defend any action that the defendant may commence for eviction or ejection from the suit property.

3 In Gurudwara (supra), paragraph 9 reads as under :-

9 As the appellant is in possession of the suit property since 13.4.1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case respondents file suit for possession and/or ejection of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of issue No.1 to the effect that the appellant is in possession of adverse possession since 13.4.1952 operates as res-judicata. Subject to this clarification, the appeal is dismissed.

Therefore, though the suit is now being dismissed as withdrawn, in case the defendant files the suit for eviction or ejection, it would be open to the plaintiff to plead and defend a suit that the plaintiff has become the owner of the property by adverse possession.

4 The suit accordingly dismissed as withdrawn.

(K.R. SHRIRAM, J.)

1 (2014) 1 SCC 669