

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No. 53 of 2016
[Najma Begum Ishteyaq Ahmad (dead) through LRs & others Vs.
Smt. Arefa Abdul Majeed & others]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Mr. M.R. Joharapurkar, Adv., for the appellant.
Mr. R.I. Agrawal, Adv., for respondent nos. 1 to 3.

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CORAM : A.B. CHAUDHARI, J.

DATE : 04th March, 2016

This appeal is directed against the Judgments and Decree passed by the two courts below concurrently holding the claim of respondent no.1, Smt. Arefa widow of Abdul Majeed and two others for possession of the house property from the appellant.

Heard learned counsel for the rival parties.

Mr. Joharapurkar, learned counsel for the appellant, submitted that both the courts have recorded perverse findings which give rise to the Substantial Questions of Law in relation to the Judgments and Decree passed against the appellant. He contended that the plea of adverse possession has been answered against the appellant by the courts below and that finding is also perverse. He, therefore, prayed for

reversal of the Judgments of the two courts below.

Per contra, Mr. Agrawal, learned counsel for the respondents, supported the impugned judgments and decree, and submitted that the courts below have concurrently found no merit in the case of the appellant or rather her defence, including the one of adverse possession and as such decreed the suit. The Judgment and Decree passed by the Trial Judge is legal, correct and proper, and has rightly been confirmed by the Lower Appellate Court.

Without prejudice to the above, Mr. Joharapurkar, learned counsel for the appellant, prayed that since the appellant has been residing right from the childhood in the property, a year should be given for vacating the suit property and the appellant would furnish an undertaking on affidavit to that effect.

The request is opposed by Mr. Agrawal, submitting that the respondents have been waiting for the fruits of the decree for so many years and it would be unreasonable to grant a year's time for vacating the suit property.

Upon hearing the learned counsel for the rival parties and upon perusal of the reasons recorded by the courts below, I find that the plea of adverse possession between the close relatives, i.e., the appellant and respondents, raised by the appellant did not find favour

with the two courts below, and, in my opinion, rightly. There was no occasion for the appellant to claim adverse possession. The hostility of possession is a *sine qua non* for claiming adverse possession, which has been found to be absent in the present case. Mere allowing continuous possession does not become adverse possession. The finding, therefore, cannot be termed as perverse.

In so far as the other reasons are concerned, having gone through the same, I find no perversity, whatsoever, with the judgments made by the courts below. In the result, I find no merit in the instant Second Appeal, which is sans any Substantial Question of Law.

In so far as the prayer for grant of time to vacate the premises is concerned, I find that the period of one year claimed by the appellant cannot be granted. At the same time, since the appellant has been residing since childhood, it would not be fair to refuse her any time to vacate the premises in question. In that view of the matter, I think the appellant should be given six months without any extension to be claimed by the appellant, on filing a usual undertaking on affidavit in this Court. In view of above, I make the following order:-

ORDER

[a] Second Appeal no. 53 of 2016 is **dismissed summarily.**

[b] The appellant is allowed time of six months from today for vacating the suit premises, subject to the appellant filing an Undertaking on Affidavit that she would hand over the possession of the suit premises to the respondents and would not claim any extension beyond the period of six months. The affidavit shall be filed within two weeks from today.

[c] No costs.

Judge

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