

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 577 OF 2016
WITH
CIVIL APPLICATION NO.11665 OF 2016
IN
SECOND APPEAL NO. 577 OF 2016**

1. Gangadhar s/o Tulshiram Lonare,
Age: 63 years, Occu: Agriculture,
R/o Suregaon, Tq. Kopargaon,
Dist. Ahmednagar
 2. Rambhau s/o Bhaurao Navghare,
Age: 68 years, Occu: Labourer,
R/o Suregaon, Kopargaon,
Dist. Ahmednagar
 3. Eknath s/o Sakharam Gadekar,
Age: 58 years, Occu: Labourer,
R/o Suregaon, Tq. Kopargaon,
Dist. Ahmednagar
 4. Vitthal s/o Manaji Jadhav,
Since deceased through L.Rs.
 - 4A. Somnath s/o Vitthal Jadhav,
Age: 38 years, Occu: Labourer,
R/o Suregaon, Tq. Kopargaon,
Dist. Ahmednagar
 - 4B. Smt. Radhabai w/o Vitthal Jadhav,
Age: 58 years, Occu: Household,
R/o Suregaon, Tq. Kopargaon,
Dist. Ahmednagar
- ..APPELLANTS

VERSUS

1. Avinash s/o Gangadhar Pangavhane,
Age: 41 years, Occu: Agriculture
and Business,
R/o Kopargaon, Tq. Kopargaon,

(2)

Dist. Ahmednagar

2. Pandharinath s/o Bhau Dhekale,
Age: 41 years, Occu: Agriculture
and Business,
R/o Kopargaon, Tq. Kopargaon,
Dist. Ahmednagar
3. Janardhan s/o Vithal Jadhav,
Age: 37 years, Occu: Labourer,
R/o Suregoan, Tq. Kopargaon,
Dist. Ahmednagar
4. Sow. Valhyabai w/o Gorakh Chavan,
Age: 31 years, Occu: Household,
R/o Suregaon, Tq. Kopargaon,
Dist. Ahmednagar

..RESPONDENTS

Mr Nitin R. Bhavar, Advocate for appellants;
Mr S.S. Chapalgaonkar, Advocate for respondent No.1

CORAM : N.W. SAMBRE, J.**DATE : 6th JUNE, 2017****ORAL ORDER :**

This appeal is by original defendants, who suffered a decree for declaration, removal of encroachment, possession, injunction and mesne profits.

2. Exhibit-132 is *Bhadepatta* executed by present appellants-defendants in favour of

(3)

respondent No.1-plaintiff thereby giving right to use land in question for uninterrupted period of 999 years from 3rd October, 1960. The said document is registered one and proved during the evidence. Based on the same, suit in question is presented alleging encroachment by the present appellants.

3. The claim in the suit was resisted by filing written statement by present appellants whereby plea is raised that vide Exhibit-142, land to the extent of 8 Are out of disputed property was sought to be transferred in favour of the appellants by the successor-in-title of the original owner, i.e. of respondent-plaintiff. Reliance is placed on *Sathekhat* (agreement to sell) dated 4th December, 1995. Based on the above, two defences were raised; (a) that the defendants-appellants have title to the property to the extent of 8 Are land and (b) they continue in possession of the suit property for period of more than 12 years and as such, plea of adverse possession was raised.

(4)

4. The trial Court framed issues at Exhibit-64 which reads thus:

ISSUES**FINDINGS**

- | | |
|--|------------------------|
| (1) Does plaintiff prove his title to the suit land? | Negative |
| (2) Does plaintiff prove that the defendants no. 1 to 8 encroached on the suit land and constructed huts thereon? | Affirmative |
| (3) Do defendants no. 1 to 8 prove that they have purchased the plots from the suit land from defendant no.9 and constructed houses thereon before 20 years? | Negative |
| (4) Whether the suit is filed within limitation? | Affirmative |
| (5) What relief, order and decree? | Suit is partly Decreed |
| (6) Whether the defendants prove that they are owners of disputed land by adverse possession? | Negative |

ADDITIONAL ISSUES:

- | | |
|---|-------------|
| (1) Whether the plaintiff is entitle for the relief of permanent injunction as claimed for? | Affirmative |
| (2) Whether the plaintiff is entitle to get the mesne | |

(5)

profit as alleged in the
plaint?

Negative

(3) Whether the plaintiff is
entitled to get the
possession of encroached
portion of suit property? Affirmative

The trial Court then decrees the suit and ordered that possession of encroached portion be handed over by the present appellants to the plaintiff and appellants-defendants are restrained from causing obstruction and interference to the peaceful possession of the plaintiff over the suit property. The appellants-defendants suffered a decree for permanent injunction.

5. An appeal under Section 96 of the Code of Civil Procedure at the behest of present appellants-defendants being Regular Civil Appeal No. 83 of 2011 came to be dismissed by detailed judgment delivered by District Judge-1, Kopergaon, District Ahmednagar on 13th November, 2014. As such, present second appeal.

(6)

6. Mr. Bhavar, learned Counsel for the appellants-defendants has sought to place reliance on the following grounds:

(a) That the document Exhibit-142-*Sathekhat* (agreement to sell) dated 4th December, 1995 conferring title on the appellants of the suit property is wrongly ignored.

(b) The appellants since are in possession of the suit property for more than 12 years, plea of adverse possession is not properly appreciated.

7. With the assistance of respective Counsel, I have perused the evidence of plaintiff and defendants. I have also perused documentary evidence, such as electric bills etc. brought on record by the appellants-defendants in support of their plea of adverse possession.

8. While dealing with plea of adverse possession, burden appears to be on the appellants

(7)

to prove that they were in uninterrupted possession of the suit property for continuous period of 12 years and said fact was well within knowledge of the plaintiff and the plaintiff-respondent herein has not disturbed possession.

9. So far as evidence of defendants' witnesses in support of above referred issue if appreciated, there is hardly any substance in the evidence to infer that the plea of adverse possession was proved by the appellants-defendants. The other documentary evidence speaks of possession of the appellants-defendants after document Exhibit-142 was executed i.e. after 4th December, 1995. The suit in question was initiated in the year 1998. In view thereof, rejection of plea of adverse possession by the Courts below, in my opinion, cannot be faulted with.

10. The next limb of submission of learned Counsel for the appellants-defendants that there exists title in favour of present appellants-

(8)

defendants by virtue of document Exhibit-142. It is to be noted that Exhibit-132 *Bhadepatta* for 999 years executed by predecessor-in-title of the plaintiff was very much proved, which is registered document. Once the said document was proved, successor of the predecessor-in-title of the plaintiff had no occasion to transfer the property, much less putting the defendants in possession of the property of which already possession rest with the plaintiff.

11. In view of above, plea that there exists title is rightly negated by the Courts below.

12. In the aforesaid back ground, there is no substantial question of law involved. The second appeal lacks merit, stands dismissed.

13. In the light of dismissal of second appeal, civil application stands disposed of.

(9)

14. By consent of the parties, interim arrangement to continue till 15th July, 2017.

(N.W. SAMBRE, J.)

Tupe