

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 47 OF 2017

Mrs. Yamini Sawant & 3 Ors.,

... Appellants

Versus

Dr. Pandurang V. Kamat Ghanekar

... Respondent

Mr. Nigel Da Costa Frias, Advocate with Mr. P. Sawant, Advocate
for the Appellants.

Mr. J. P. Mulgaonkar, Advocate for the Respondent.

Coram : N.M. Jamdar, J.

Date : 17 November 2017.

P. C.

This Second Appeal is filed by the original Defendants challenging the concurrent Judgment and Order passed by the learned Civil Judge, Panaji and learned District Judge, Panaji, decreeing the suit filed by the Plaintiff and dismissing the Appeal filed by the Appellants.

2. The Respondent-Plaintiff filed the suit for recovery of suit property bearing no. 40/9 of Curca Village, Tiswadi Taluka. The Respondent-Plaintiff also sought relief of injunction against the Appellants. The case of the Respondent-Plaintiff that the Appellants, the original Defendant no. 3 had a cattle-shed in the suit property. However, sometime in the year 1996, the Defendant no. 3

demolished the cattle-shed and an illegal structure was put up. According to the Respondent-Plaintiff, necessary steps were taken and representations were made to various authorities. The Appellants approached the authorities for water connection, which was objected by the Respondent-Plaintiff. Further, proceedings were taken by the Appellants and ultimately the Respondent-Plaintiff filed a Regular Civil Suit No. 80 of 2006 in the Court of Civil Judge, Junior Division, Panaji, for recovery of possession. The Appellants by filing the written statement took three defences. First, that the structure over the suit property was a mundkarial house. Second, that the Appellants had purchased the property by paying consideration to the Respondent-Plaintiff. Thirdly, that the Appellants have become owners by adverse possession. The learned Civil Judge after considering the evidence on record did not accept the case of the Appellants and decreed the suit by Judgment and Order dated 31 December 2012. The Appellants, thereafter, filed Regular Civil Appeal no. 9 of 2014. The learned District Judge after considering the material on record dismissed the Appeal by Judgment and Order dated 11 August 2016.

3. Heard Mr. Nigel Da Costa Frias, learned Counsel for the Appellants and Mr. J. P. Mulgaonkar, learned Counsel for the Respondent-Plaintiff.

4. The first submission made by Mr. Nigel Da Costa Frias, learned Counsel for the Appellants was regarding the claim of the Appellants of being mundkar of the structure in question. Both the Courts have considered this aspect and have found that the structure was 70mts away from the suit property and the claim of being mundkar was of the father of the Appellants in a different suit property. In the view of these facts, the claim of the Appellants being mundkar was rightly negated.

5. The second contention of the Appellants was based on the ownership right of the Appellants pursuant to a purchase from the Respondent-Plaintiff. Both the Courts have rightly held that there was no Sale Deed nor any documents of transfer in favour of the Appellants. Nothing is shown as to how this finding is incorrect, except by stating that the amount was given to the Respondent in trust. In absence of any title deed, claim of the Appellants based on ownership cannot be accepted.

6. Mr. Nigel Da Costa Frias, learned Counsel for the Appellants then submitted that the Appellants are entitled to continue in possession of the property being in adverse possession of the same. Mr. Da Costa Frias, relied on the averments made in the written statement and also admissions of the Respondent-Plaintiff.

According to Mr. Da Costa Frias, the Appellants through their father bearing possession of cattle-shed and subsequently the property since 1971-72, the records show the name of the Appellants to which no objection was taken. Subsequently, house number was given to the structure on 06 December 2014 to which also no objection was taken. The construction was put up in the place of the cattle-shed in the year 1994 and only in 2006 the suit has been filed and the Appellants have been in open, clear and hostile possession of the suit property. Mr. J. P. Mulgaonkar, learned Counsel for the Respondent-Plaintiff submitted that the both the Courts have considered this aspect and have also considered the law laid down by the Apex Court and have arrived at a correct finding.

7. Even assuming all the facts relied upon by Mr. Da Costa Frias are to be accepted, still it will not amount to adverse possession of the Appellants. The Apex Court in the case of **L. N. Aswathama and anr. Vs. P. Prakash, (2009) 12 SCC 229** has observed that it is not enough that there is long and continuous possession, even permissive possession. For adverse possession, there must be an animus to dispossess the true owner and there must be clear indication of the possession being hostile to the title of the true owner. In the present case, after the structure was put up, the Respondent-Plaintiff has made representation to the authorities and it is not that the Respondent-Plaintiff accepted the possession, even

assuming the possession is to be considered as permissive possession. Both the Courts have recorded the finding of fact that for electricity and water connection, Appellants represented that they have permission of the Respondent-Plaintiff. Both Courts thereafter considered these ingredients and rightly concluded that they do not pass the test of establishing adverse possession.

8. There is no error in the conclusions of the Courts based on the law laid down by the Apex Court. In the circumstances, no substantial question of law arises. There is no perversity in appreciation of evidence. The Second Appeal is accordingly dismissed.

N.M. Jamdar, J.