

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO.277 OF 1996**

Shri Sharadrao Daulatrao Jadhav
(Since deceased through his legal heirs
and representative s).

...Appellants

vs.

Smt. Saraswatibai w/o Bapusaheb Jadhav,
(Since deceased through her legal heir) & Ors.

...Respondents

....

Ms. Madhavi Tavanandi, for the Appellants.

Mr. S.G. Karandikar, for Respondent No.3(i) to 3(iii) and 4.

Mr. Manoj A. Patil, for Respondent Nos. 2(a) to 2(d).

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CORAM : S.C. GUPTE, J.

DATED : 2 MARCH 2017

P.C. :

. Heard learned Counsel for the parties. This Second Appeal impugns a judgment and order passed by the District Court at Kolhapur in Regular Civil Appeal No.447 of 1993. By this impugned judgment and order, the learned District Judge allowed the Respondents' appeal and set aside the decree passed by the Trial Court in favour of the Appellants herein.

2. The case of the original Appellant (Original Plaintiff) before the Trial Court was that the property bearing CTS No.2024, Kolhapur was owned by the Plaintiff, the property being the subject matter of an

earlier partition of the year 1961 between family members. The property was originally owned by one Daulatrao Jadhav. The respective predecessors- in-title of the Plaintiff and the Defendants, namely, Sharadrao and Bapusaheb, were Daulatrao's sons. By a registered deed of partition executed in the year 1961, the properties of the family were partitioned and the property, bearing City Survey No.2024, came to the share of Sharadrao. It is the case of the Plaintiff that Bapusaheb, the step brother of the Plaintiff, was allowed to reside in the suit premises as a gratuitous licensee. It is submitted that, after the Plaintiff was in need of the premises, he demanded possession thereof from the Defendants, who are legal heirs of deceased Bapusaheb, but the latter refused to handover the same and, accordingly, the present suit was filed for possession based on the Plaintiff's title. The Defendants contested the suit on various grounds. It is the case of the Defendants that the entire property, bearing City Survey No.2024, was purchased out of money sent by Bapusaheb, the predecessor of the Defendants, who was serving in the military. It is submitted that even the house was constructed on the plot with the money sent by Bapusaheb. It is submitted that Bapusaheb was in possession of the premises since the date of its purchase as an owner and, after Bapusaheb, the Defendants have been in possession of the property in their own right as legal heirs of the deceased owner. Alternatively, the Defendants claim to have become owners of the suit property by way of adverse possession.

3. The Trial Court found that the Plaintiff had proved that the suit property was allotted to him on a prior partition and that the Defendants had failed to prove that they had become owners by adverse

possession. The Trial Court, in the premises, decreed the Plaintiff's suit, holding him to be entitled to the possession of the suit property. When the matter came in appeal at the instance of the Defendants, the first Appellate Court non-suited the Plaintiff simply on the ground that it was for the Plaintiff to prove that the possession of the Defendants or their predecessor in title was that of a licensee of the Plaintiff. The first Appellate Court came to the conclusion that since that was not proved by the Plaintiff, his suit ought to be dismissed. This is a pre-postoruous conclusion having no basis in law whatsoever. When a plaintiff approaches a civil court with a case for possession based on title, all that he needs to show is that he has a title to the suit property and that the defendant is occupying the same. It is for the defendant to prove the lawfulness of, and authority for, his possession. The onus to prove that the defendant occupied the suit property in any particular capacity cannot be cast on the plaintiff. On this elementary point, the learned District Judge has gone wrong and come to an erroneous conclusion.

4. The order of the District Court cannot, accordingly, be sustained. Considering, however, that whilst non-suiting the Plaintiff on this sole ground, the learned District Judge has not considered the other grounds of appeal raised by the original Defendants and which really bear on the merits of the controversy, there is no option but to set aside the impugned judgment and order, and remand the first appeal for a fresh consideration in accordance with law.

5. Accordingly, the Second Appeal is allowed and the impugned judgment and order passed by II Additional District Judge,

Kolhapur dated 24 July 1995, is set aside, and Regular Civil Appeal No.447 of 1993 is remanded to the District Court at Kolhapur, for a fresh hearing in accordance with law. Considering the fact that the suit is of the year 1975, the hearing of the appeal is expedited. The District Court is directed to dispose of the appeal as expeditiously as possible and, in any event, within a period of six months from today. The Respondents (Original Defendants) shall not create any third party rights or part with possession to the suit property in favour of any third party during the pendency of the civil appeal. No order as to costs.

(S.C. GUPTE, J.)