

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.515 OF 1994

Shri Arjun Vithoba Pise
(Since deceased) through his legal
representatives

...Appellants

vs.

Shri Krishna Ananta Pise

...Respondent

....

Mr. A.V. Anturkar, Senior Advocate, a/w. Tanaji Mhatugade, i/b. S.B.
Deshmukh, for the Appellants.

Mr. Keyval P. Shah, i/b. P.B. Shah, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 2 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Second Appeal challenges a judgment and order passed by the District Court at Baramati. By this judgment and order, the learned District Judge allowed the Respondent's appeal and set aside a judgment and decree passed by the Trial Court decreeing the Appellant's suit. The subject matter of controversy concerns an open plot admeasuring 64 ft. x 25 ft. It is the case of the Appellant (Original Plaintiff) that this open plot forms part of House No.117, which belongs to him, whereas it is the case of the Respondent (Original Defendant) that this plot forms part of House No.87, which is owned by the Respondent. The first Appellate Court has gone through the evidence led

by the parties before the Court. Based on this evidence, the Court has come to the conclusion that Municipal House No.87 belongs to the predecessors-in-title of the Respondent; and that this open plot forms part of House No.87. The sale deed executed in favour of the Respondent by his predecessors, along with the assessment list produced by the Respondent, clearly shows that the suit plot forms part of House No.87. On the other hand, the sale deed, through which the Appellant claims to have acquired title to the suit plot does not show the suit plot as forming part of Municipal House No.117. The area of the house property mentioned in the sale deed is 32ft. x 25½ft. Even the assessment list forming part of municipal record shows the dimensions of the house as 32ft. x 25½ft. The first Appellate Court has, accordingly, rightly held that the suit property belonged to the Respondent. The Court has observed that the Appellant was not claiming any ownership over the suit property by way of adverse possession. Mere fact that the plaintiff is found to be in possession of an open plot, whilst the owners of the plot are away, cannot establish lawful possession of the plaintiff over the open plot, which he can assert against the lawful owner and, on the basis of which, he can claim injunctive reliefs against the lawful owner.

3. Accordingly, there is no merit in the Second Appeal and the same is dismissed.

(S.C. GUPTE, J.)