

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 635 OF 2014
ALONG WITH
CIVIL APPLICATION NO. 1018 OF 2014

Vitthal Malkappa Maghi,

since deceased, through his L.R's

1A Ravi Vitthal Maghi and Ors.

... Appellants / Applicants

Versus

Parmeshwar Basappa Pomaji and Ors.

... Respondents

Mr. Shrishail Sakhare for the Appellants / Applicants.

Mr. A.B. Tajane for the Respondents.

CORAM : S.J. KATHAWALLA, J.

DATED : 13TH JULY, 2017

P.C.:

1. Regular Civil Suit No. 8 of 2002 was filed by Respondent Nos. 1 and 2 (Original Plaintiff Nos. 1 and 2) before the Learned Civil Judge, Junior Division, Akkalkot, Dist. Solapur ('Trial Court') for recovery of possession, arrears of rent and for mesne profits from Vitthal Malkappa Maghi (Original Defendant). The Suit filed by the Plaintiffs was allowed by a Judgment and Decree dated 12th December, 2005, and the Defendant was directed to handover the property bearing CTS No.1288 admeasuring 53.1 sq. mtrs. situated at Vagadari Village, Tq. Akkalkot, Dist. Solapur, and more particularly described in paragraph 1 of the Plaint ('Suit Property'), to the Respondents (Original Plaintiffs). Being aggrieved, the heirs of Original Defendant ('Appellants') impugned the Judgment and Decree of the Trial Court dated 12th

December, 2005, by filing an Appeal, being Civil Appeal No.7 of 2006 before the District Court, Solapur ('Appellate Court'), which too was dismissed with costs, vide a detailed Judgment and Decree dated 10th July, 2013. The Appellants once again being aggrieved therefrom, have preferred the above Second Appeal under Section 100 of the Code of Civil Procedure, 1908 ('CPC').

2. For the sake of convenience, the Appellants and the Respondents are referred to hereinafter as per their original status i.e. as Defendants and Plaintiffs respectively.

3. The Plaintiffs in Regular Civil Suit No.8 of 2002 contended that they are the owners of the Suit Property, and under an oral agreement the Suit Property was given to the Defendants on rent of Rs. 200/- per month. However, since 1st January, 1994, the Defendants had not paid rent and were in arrears to the tune of Rs.18,800/- as on 30th October, 2001 and therefore by Notice dated 23rd November, 2001, the tenancy of the Defendants was terminated. Since the Defendants failed to handover possession of the Suit Property and also failed to pay the arrears of rent, and since the Rent Act is not applicable to village Vagadari, the Plaintiffs filed Regular Civil Suit No.8 of 2002.

4. The Defendant filed his Written Statement, wherein he contended that initially by a 'Kabulayatnama' the Suit Property was given by the Grampanchyat to Akba Satappa Pomaji for a period of 30 years i.e. from 1917 to 1947 and after expiry of the said Kabulayatnama, the Plaintiffs are neither the owners nor the possessors of the Suit Property. The allegations therefore, of the Defendant taking the Suit Property on rent which was Rs.200/- per month and the Defendant not paying the rent, are denied.

The Suit Property belongs to the Grampanchayat and in the year 1982 the Suit Property was allotted to him and since then he is in possession of the same. He has constructed a house on the Suit Property and is also in occupation of the same since 1982 ; since the brother of the Plaintiffs was serving in the Grampanchyat Office, he has prepared a false mutation entry and recorded the name of the Plaintiffs. The Suit is barred by limitation and is not maintainable, and that in the alternative it is submitted that since 1982 the Defendant is in occupation of the Suit Property without any interruption or objection, and therefore he has become the owner of the Suit Property by way of adverse possession ; and the Suit therefore be dismissed.

5. The Trial Court framed 14 issues interalia: whether the Plaintiffs prove that they are owners of the Suit Property; whether the Plaintiffs prove that the Defendant is / was a tenant of the Suit Property; whether the Plaintiff is entitled for possession of the Suit Property ; whether the Suit is within limitation ; and whether the Defendant proves his title over the Suit Property by way of adverse possession.

6. The Trial Court has recorded that the Plaintiffs have filed the Extract of CTS No. 1288 (Exhibit-9), wherein the names of the Plaintiffs are found recorded on 28th November, 1994 ; on perusal of Exhibit-10, the extract of assessment list of properties of Grampanchayat at Vagadari for the year 2000-2001 and 2003-2004, the names of the Plaintiffs are found recorded for House No. 476 vide Grampanchayat Resolution No. 62(1) dated 28th September, 2001 ; the names of the Plaintiffs are found recorded on the certified extract of revenue record for converting the Gavathan area into non-agriculture ; the document filed by the Defendant (Exhibit-40), that is

the Grampanchayat's resolution, itself discloses that the Suit Property is owned by the Plaintiffs; that the Defendant has examined witness – Iranna, the Gramsevak of Vagadari, who has disclosed that the proceedings of Grampanchayat Vagadari for the year 1981-82 are not with him as he was not handed over the said proceedings when the charge was handed over to him ; the Defendant has himself filed the Certificate issued by the Grampanchayat vide Exhibit-41 stating that the extract of Grampanchayat House No. 476 for the year 1982-83 and 1992-93 is not available in the Grampanchayat Register ; the Defendant filed the general receipts showing acceptance of certain amount by the Grampanchayat and has also produced certain electricity bills. However in none of the receipts / bills, produced by the Defendant, the Grampanchayat house number or city survey number is mentioned / disclosed ; the Defendant has therefore not disclosed any documents showing the title of the Defendant with regard to the Suit Property ; on the contrary, the Plaintiffs have filed documentary evidence in support of their case that they are the owners of the Suit Property.

7. The Advocate for the Defendant argued that production of mere revenue records is not sufficient for holding the title of the Suit property in favour of the Plaintiffs. The Trial Court has not accepted the said argument on the ground that in the present case, the Plaintiffs have filed the documents set out hereinabove, which shows the ownership of the Plaintiffs in respect of the Suit Property. Considering the said documents and in the absence of documentary evidence by the Defendants, the Trial Court was satisfied that the Plaintiffs have proved the title of the Suit

Property, and that they are the owners of the Suit Property.

8. The issue as to whether the Plaintiffs prove that the Defendant was a tenant in respect of the Suit Property and all other issues pertaining to tenancy, have been answered by the Trial Court in the negative. However, the Trial Court held that the Court Fees valued by the Plaintiffs under Sections 6 XII and 6 V of Bombay Court Fees Act, 1959 is correct and proper. The Trial Court also held that the Maharashtra Rent Control Act, 1999 is not applicable to Village Vagadari.

9. As regards the issue as to whether the Suit filed by the Plaintiffs was within limitation, the Trial Court held that the Plaintiff has contended that the Defendant was inducted in the Suit Property in the year 1993. Though, the Plaintiffs have failed to prove the relationship between them and the Defendant as tenant and landlord, the Plaintiffs have proved the title to the Suit Property. As per Article 65 of the Limitation Act, 1963, the period prescribed for filing a Suit for possession of immovable property or any interest therein based on title is 12 years and time begins to run when possession of the Defendant becomes adverse to the Plaintiffs. The Trial Court held that since the Plaintiffs have in the alternative, based their claim on title and specifically contended that the Defendant was inducted in the Suit Property in the year 1993, the Suit filed by the Plaintiffs on 19th January, 2002 is within time. As regards the claim of adverse possession advanced in the alternative by the Defendant, the Trial Court rejected the claim on the ground that the Defendant has failed to prove possession over the Suit Property for more than 12 years and has failed to file any documentary evidence ; the documents submitted by the Defendant do not show that

they pertain to the Suit Property. The Trial Court therefore held that the Defendant has failed to prove his title over the Suit Property by adverse possession.

10. The Trial Court therefore decreed the Suit with costs and directed the Defendant to hand over possession of the Suit Property to the Plaintiffs.

11. As stated earlier, being aggrieved by the said Judgment and Decree passed by the Trial Court, the heirs of the Defendant filed an Appeal being Civil Appeal No. 7 of 2006 before the District Court, Solapur. After appreciating the oral and documentary evidence filed by the parties, the Appellate Court held that the Plaintiffs have proved that they are the owners of the Suit Property. The Appellate Court in paragraphs 11, 12 and 13 of its Order held as under :

“11. The important fact to be noted is that the Resolution No. 8 dated 20.12.94 passed by Grampanchyat Wagdari (original exh.40) shows that defendant Vitthal was trespasser in the suit property bearing CTS No. 1288/H. No. 432 and the said property was belonging to plaintiff Parameshwar and his brother Mahadev Pomaji, hence, entry of Vitthal's name from the property register was deleted. Thus, considering the entire oral and documentary evidence led by the parties there is absolutely no evidence that the appellant / defendant occupied and possessed the suit property since 1982 or the suit property belong to Grampanchayat Wagdari. On the contrary, the public documents of property register card and tax assessment register extract show that respondents / plaintiffs are owners of the suit property.

12. Though there is no previous record to show that the plaintiffs or their forefathers were owners of the suit property but it appears that the previous proceedings and record pertaining to suit property is not available with

Grampanchayat. However, the appellant/defendant had neither challenged the mutations effected in the name of Plaintiffs nor he adduced any evidence/document to show that Grampanchayat is owner of suit property. In absence of any documentary evidence from the defendant, I am inclined to hold that respondents/plaintiffs are the owners of the suit property.

13. Though it is not proved that the appellant/defendant was tenant of plaintiffs, but it is proved that appellant/defendant was trespasser in the suit property. The plaintiffs have filed the suit on the basis of their title and claimed possession of the suit property. According to them, the suit property was mutated in their name in the year 1994 vide Grampanchayat resolution. The suit was filed in the year 2002 i.e. within 12 years from 1994. Therefore, as per Article 65 of the Indian Limitation Act, the suit is within limitation and the respondents/plaintiffs are entitled for recovery of possession of the suit property. Points are answered in affirmative accordingly.”

12. As regards the contention of the Defendant that the Trial Court erred in holding that the Defendant had not become the owner by way of adverse possession, the Appellate Court in paragraphs 14 and 15 of its Order held as under :

“14. The appellant / defendant has pleaded and contended that since 1982 he is in occupation and possession of the suit property openly and without interruption, therefore, he has become owner of the suit property by way of adverse possession.

15. The contentions of the appellant / defendant cannot be accepted because he had denied the title and ownership of the plaintiffs and had not accepted their ownership. So also, there is no evidence that at any time he had asserted any hostile animus to the knowledge of the plaintiffs. On the

contrary, the appellant / defendant had pleaded and deposed that the suit property belongs to Grampanchayat. Therefore, he cannot blow hot and cold at one and same time and cannot claim ownership by way of adverse possession. In such circumstances, I hold that his plea of ownership by way of adverse possession cannot be accepted. Point is answered accordingly in the negative.”

13. In the above Second Appeal, the Advocate for the Appellants has raised the same grounds namely that the Suit Property was handed over to the Original Defendant by the Grampanchayat, and that even if it is held that the Plaintiffs are the owners of the Suit Property, the Defendant has become owner of the Suit Property by way of adverse possession. In my view, the Trial Court as well as the Appellate Court, have after appreciating the oral as well as documentary evidence led / placed before these Court/s by the parties, vide their detailed reasoned Judgments, given concurrent findings on facts namely that the Plaintiffs are the owners of the Suit Property and the Defendant has failed to prove that he is the owner of the Suit Property by virtue of adverse possession. Therefore, in my view no substantial question of law, arises in the present Second Appeal and the same is therefore dismissed. The above Civil Application is also dismissed.

(S.J.KATHAWALLA, J.)