

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.40 OF 2017
WITH
CIVIL APPLICATION NO.71 OF 2017

Smt. Gajarabai Hanmant Pol & Ors. Appellants
Vs.
Shri. Bakulabai Laxman Shinde & Ors. Respondents

Mr. Sandesh Patil a/w Ms. Anusha Amin i/by Triyama Legal for the
Appellants and Applicants.

Mr. Madhav Jamdar for Respondent Nos. 1 to 5.

Coram : N.M. Jamdar, J.

Date : 11 April, 2017

ORAL ORDER :

By this appeal, the Appellants have challenged the judgment and orders passed by the learned Civil Judge, Senior Division, Satara and the learned District Judge, Satara, whereby the suit filed by the Respondents-Plaintiffs was decreed and the appeal filed by the Appellants was partly allowed only to the tune of reduction of the amount of damages and confirming the order directing handover over of possession.

2 The Respondent-Plaintiff filed Special Civil Suit No. 185 of 2010 seeking possession of the suit property i.e. 28 R out of 69 R of gat No. 554/1 situated at village Bhuij, Taluka Vai, District Satara. According to the Respondent-Plaintiff the suit land was given to the Respondent-Plaintiff by the Rehabilitation Officer pursuant to the resettlement in respect of Dhom Irrigation Project and the Appellant was illegally occupying the same. The learned Civil Judge decreed the suit by the judgment and order dated 20 September 2012 and directed the Appellant to handover possession and also pay damages for Rs.1,90,000 and also directed enquiry as to mesne profits. The Appeal bearing No. 438 of 2012 was filed by the Appellant, which was disposed of by the learned District Judge by the judgment and order dated 22 July 2016.

3 The learned counsel for the Appellant submitted that both the courts have erred in holding that the Respondent-Plaintiff is owner of the suit premises without there being enquiry as to his title and merely relying on the decision in the earlier suit between the parties which was only for the purpose of injunction. He submitted that without there being a finding as regards the ownership of the Respondent-Plaintiff, the suit based on title could not have been decreed.

4 The contentions of the learned counsel for the Appellants cannot be accepted. This is not the first litigation between the parties. The Appellants had filed a suit bearing No. 620 of 1990 in the Court of Civil Judge, Senior Division, Satara. The papers of those proceedings have been placed on record. Perusal of the decision of the Civil Judge in that suit shows that the suit was filed by the Appellant contending that though the Appellant was the owner of the larger land, including the subject matter of the present suit i.e. 29 R, the Respondent-Plaintiff was not accepting the same and was trying to dispossess him and therefore a suit for injunction had to be instituted. In the suit itself, the Appellant had made it clear that his title was being disputed by the Respondent-plaintiff herein. Consequently, the Civil Judge framed issue as to whether the plaintiff proves his lawful possession over the suit property and his title. The specific issue in respect of the title of the Appellant was framed. Thereafter by an elaborate discussion, the learned Civil Judge concluded that the Appellants had utterly failed to prove their title over the suit land. On the other and, the defendant no.2 had proved his title and the suit of the Appellants was dismissed with costs. Therefore the Appellants put the issue of his title and right of the Respondent-Plaintiff to the land squarely into issue, and the learned Civil Judge consequently decided the same and held that it is the Respondent-plaintiff in the present suit, defendant no.2 therein had

proved the title in the suit property. The appeal was filed by the present Appellant, which was dismissed on 7 April 2009, the finding that the Respondent-Plaintiff was the owner of the suit land thereby, was confirmed. In view of this finding, the least that could be done is to demonstrate that the order of the Rehabilitation Officer, which grants 29 R to the Respondent-Plaintiff does not indicate the ownership. The only argument that is regarding burden of proof and the earlier suit only for injunction. Both contentions are incorrect. The finding in the earlier suit regarding the title of the Respondent is clear and binding. This is nothing but an attempt on the part of the Respondent-Plaintiff to illegally holding on to the land which is owned by the Respondent. There is absolutely no error in the decision of both the courts that the Respondent-Plaintiff is entitled to possession of the suit property on the basis of his title.

5 It was then sought to be contended that the suit filed is not within limitation and the learned Civil Judge was in error in holding that since the earlier appeal was disposed of on 7 April 2009, the present suit filed on 6 September 2010 was within limitation having filed within a period of 3 years. The learned counsel submitted that since Article 58 of Limitation Act was applied, the decision of Apex Court in Khatri Hotels Private Limited and Anr. Vs. Union of India (UOI) and Anr, decided in Civil Appeal No.7773 of

2011 will have to be noticed. He submitted that the Appellant had squarely raised the contention regarding his ownership and from that date, the limitation would apply. As rightly pointed out by the learned counsel for the Respondent-Plaintiff that the present suit is based on title for possession of immovable property and the limitation is 12 years from the date the possession of the defendant becomes adverse to the Plaintiff.

6 In the present case, the Appellants had set up their own title. There is no question therefore of any claim of adverse possession. The suit is governed by Article 65 and therefore is within limitation. Therefore, even though the finding of the Trial Court that the suit is within limitation having been filed within three years, may not be correct, a direct conclusion will not follow that the suit is not within limitation, in view of the applicability of Article 65 of the Limitation Act.

7 The decision of the learned Civil Judge, in the earlier suit shows that the Appellants are in habit of institution of legal proceedings and has resorted to litigation on all possible fronts to hold on to his illegal possession. The Appellants have challenged the mutation entries before the Collector, thereafter filed appeals before the Commissioner, filed a suit and an appeal, thereafter the first

appeal and then the Second Appeal. The Appellants have engaged the Respondent in litigation over the suit land for last 27 years without having any right in the property. Such conduct of illegally holding on to the possession of the property at any cost, will have to be deprecated as conduct such as the present one brings the system in disrepute. The Second Appeal dismissed with costs quantified at Rs.25,000/-. If this cost are not paid to the Respondent-Plaintiff within a period of eight weeks, the Plaintiff will be entitled to apply to the concerned Collector to recover the same as arrears of land revenue.

8 In view of the dismissal of the Second Appeal, the Civil Application does not survive, the same is accordingly disposed of.

(N.M. Jamdar, J)