

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.129 OF 2017
ALONGWITH
SECOND APPEAL (ST.) NO.35041 OF 2016
WITH
CIVIL APPLICATION NO.299 OF 2017**

Tukaram Dnyanu Patil And Others ... Appellants
Versus
Smt. Vijaymala Dinkar Patil And Others ... Respondents
.....
Mr. Chetan G. Patil for the Appellants.
Mr. Sachin Gite for Respondent No.8.
.....

CORAM : S.C. GUPTE, J.

DATE : 23 FEBRUARY 2017

P.C. :

. Heard learned Counsel for the parties.

2 These second appeals challenge a judgment and order passed by the District Court, Kolhapur in Regular Civil Appeal No.362 of 2013. By this judgment and order, the learned District Judge dismissed the appeal filed by the Appellants herein and confirmed the judgment and decree passed by the Joint Civil Judge, Junior Division, Panhala in Regular Civil Suit No.73 of 2016 in favour of the Respondents.

3 The suit is filed by the Appellants (original Plaintiffs) for a perpetual injunction restraining the Respondents (original Defendants) from disturbing the former's possession of the suit property. The Plaintiffs'

property consists of a plot of land bearing CTS No.531 at Village Kasaba Thane in Taluka Panhala, District Kolhapur. The Defendants are admittedly owners of the adjacent plot bearing CTS No.530. The dispute concerns a portion of CTS No.531 admeasuring 1.85 meters east-west and 125 sq.ft. south-west, which, it was the Plaintiffs' case, the Defendants were trying to take possession of. The Plaintiffs, in the premises, sought a permanent injunction restraining the Defendants from causing an obstruction to their peaceful possession of the disputed portion of land. The Defendants, for their part, filed a counter claim, claiming recovery of possession of this disputed portion of land from the Plaintiffs. It was the Defendants' case that this disputed portion formed part of their land, namely, CTS No.530. They relied on a city survey extract prepared by Taluka Inspector of Land Records (TILR) alongwith the commissioner's report showing the disputed portion of land to be a part of CTS No.530. The Trial Court, after arriving at a finding of the fact that the disputed portion of land belonged to the Defendants, dismissed the Plaintiffs' suit and decreed the counter claim filed by the Defendants. The decree of the Trial Court was carried in appeal by the Appellants herein in two separate appeals. By the impugned judgment and order passed by the District Judge, both appeals were dismissed and the judgment and decree of the Trial Court confirmed by the First Appellate Court.

4 Learned Counsel for the Appellants (original Plaintiffs) submits that the Courts below were in error in relying on the report of the TILR. It is submitted that whilst this report was prepared at the instance of the Defendants and at a point of time anterior to the filing of the present suit, the Courts below have mistakenly referred to it as a Court Commissioner's

report. Be that as it may, the question whether the disputed portion of land forms part of the Defendants' land, namely, CTS No.530 or the Plaintiffs' property, namely, CTS No.531, is a pure question of fact. The Defendants have not only relied on the city survey extract alongwith the report prepared by the TILR, which shows the disputed portion of land as being part of their property, but have also examined the TILR in evidence. Based on the city survey extract as well as report prepared by the TILR and the oral testimony of the TILR and other material before them, both Courts have come to a concurrent finding of fact that the disputed portion of land forms part of the Defendants' property. No substantial question of law arises for the determination of this Court from that finding. The finding of the Courts below is based on evidence. There is no relevant or germane material disregarded, or no irrelevant or non-germane material considered by the Courts for arriving at this finding.

5 Learned Counsel for the Appellants alternatively presses his case of adverse possession and the corresponding bar of limitation in filing the Defendants' counter claim for possession of the disputed land. It is submitted that there is a 'gobar gas plant' constructed by the Plaintiffs in the disputed portion of land as far back as in the year 1990 and that the counter claim filed by the Defendants in the year 2006, is clearly barred by limitation. The Trial Court has come to the conclusion that the Plaintiffs have nowhere referred to their adverse possession in the plaint. On the other hand, it has been their case in the plaint that the disputed portion of the suit property formed part of their land. The Trial Court has rightly observed that the concept of adverse possession contemplates a hostile possession on the part of the person claiming it, i.e. a possession which is

expressly or impliedly in denial of the title of true owner and that too to the knowledge of latter. There is no point of time that can be fixed with effect from which, the Plaintiffs' possession, in the facts of the present case, can be said to have become so adverse. There is, thus, no merit in the plea of adverse possession or bar of limitation raised by the Appellants. Learned Counsel for the Appellants submits that the First Appellate Court has simply accepted the findings in this behalf of the Trial Court without independently applying its mind to the plea of limitation. The discussion reflected in the impugned judgment and order of the First Appellate Court, though somewhat sketchy, cannot be said to be inadequate insofar as the merits of the plea of limitation is concerned. There is no material that could be shown even to this Court that at any particular point of time, the Plaintiffs asserted adverse possession to the Defendants, so as to start the limitation period for the Defendants' case for recovery of possession. The Defendants have come to the Court with a specific case that only after they carried out the survey in the year 2005, that they came to know about the encroachment made by the Plaintiffs and accordingly, preferred their counter claim. This aspect of the matter also does not give rise to any substantial question of law.

6 There is no merit in these second appeals. The same are, accordingly, dismissed. No order as to costs.

7 Learned Counsel for the Appellants applies for a limited stay of the impugned judgment and order. Both the Courts having dismissed the Plaintiffs' suit and allowed the Defendants' counter claim and this Court, after hearing the parties, having dismissed the second appeals summarily,

there is no question of considering grant of any further ad-interim protection to the Appellants. The application for stay is, accordingly, refused.

8 In view of the dismissal of the second appeals, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)