

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (S) NO.580 OF 2016
IN
SECOND APPEAL NO.259 OF 2016
SURESH MADHAORAO TEMBHARE AND OTHERS
VS
SK. ZAMIR SK. AINU & OTHERS

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.N. Patre, Advocate for the applicant.
Shri Amar R. Chauhan, Advocate for respondent Nos.1 to 9.

CORAM : A.S. CHANDURKAR, J.
DATED : JUNE 16, 2017.

As the estate of deceased Madhaorao was represented before the first appellate Court by his legal heirs, this application is allowed. The legal heirs of deceased appellant No.2 are permitted to be brought on record.

Civil application is allowed and disposed of.

SECOND APPEAL NO.259 OF 2016.

The appellants are the original defendants in a suit for possession filed by the respondents after issuing notice. It is the case of the respondents that one Sk AINU was the owner of the suit property in which the original defendant Madhaorao was permitted to reside as a gratuitous licensee. After the death of Sk. AINU, notice dated 9-4-1993 came to be issued demanding possession. As the possession was not handed over, the suit seeking possession was filed. The defendants raised a plea that in the year 1954 Madhaorao

had purchased the open plot from Sk. Ainu for Rs.300/- and one Bullock. However, no sale deed was executed. It was then pleaded that the defendants acquired title through adverse possession.

The trial Court after considering the evidence on record held that in absence of any document of title, the defendants could not prove that they were owners of the suit property. As regards aspect of adverse possession, it was held that the defendants did not specifically prove the ouster of the original owner and their open assertion of title. After holding that Madhaorao was occupying the premises as a gratuitous licensee the suit was decreed. The appellate Court on reappreciation of the evidence dismissed the appeal preferred by the defendants.

Shri V. N. Patre, learned Counsel for the appellant submitted that in view of possession of the appellants since the year 1954, it was clear that they had acquired title to the same. He submitted that though the said transaction was oral, there was sufficient evidence to indicate that the occupation of the appellants was as owners of the suit property. He then submitted that as their occupation was open and continuous, they acquired title by adverse possession. He, therefore, submitted that the suit could not have been decreed merely by issuing notice of termination.

Shri A. R. Chauhan, learned Counsel for the respondents supported the impugned judgment. He submitted that there was no sale deed executed by the original owner and the findings recorded that the appellants were in gratuitous occupation was based on evidence led by the parties. The title of the original owner was not questioned by the appellants to hold that they had perfected their title by adverse possession.

Having heard the respective Counsel, I do not find that the second appeal gives rise to any substantial question of law. Admittedly, there is no document of sale executed in favour of Madhaorao to indicate sale transaction of the open plot. Both the Courts have found that the name of Madhaorao was shown in the assessment list but not as owner. Further evidence did not indicate that the occupation of the appellants was in the capacity as owners and hostile to the title of Sk. AINU. They never asserted their title as owners. These findings have been recorded on the basis of evidence led by the parties. I find that the said findings are purely findings of fact and there is no reason to interfere with these findings. The Second Appeal is, therefore, dismissed. No costs.

As the appellants are in occupation of the suit property since 1954, they are granted time till the end of September, 2017 to vacate the suit property. The appellants shall file an undertaking in this Court within a period of four weeks from today that they shall hand over vacant possession of the suit property to the respondents by the end of September, 2017.

JUDGE

/MULEY/