

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****SECOND APPEAL NO.264/2017**

Kisan Gopaldas Kaliwale ..vs.. Jassobai wd/o Chandulal Kaliwale (Dead)
through LR Natthu s/o Chandulal Kaliwale and ors.

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

Court's or Judge's orders.

Mrs. R. S. Sirpurkar, Advocate for appellant.

Mr. R. S. Charpe, Advocate for respondent.

CORAM : V.M. DESHPANDE, J.

DATED : OCTOBER 3, 2017

Heard Mrs. Sirpurkar, Advocate for appellant and
Mr. Charpe, Advocate for respondents.

The present appeal is filed by original defendant
no.1. Deceased respondent no.1 and respondent no.2 are
original plaintiffs. The suit was filed for possession and for
perpetual injunction.

As per the written statement of the appellant-
defendant no.1, Bichu who died in 1945 had four sons; (i)
Satru, who died in 1986 without any heir, (ii) Gopal who
died in 1976 leaving behind four sons including appellant-
defendant no.1, (iii) Narayan, the original defendant no.2
and (iv) Chandulal, husband and father of the plaintiffs,
who died in 1993. As per the case of the appellant, before
the trial Court, the deceased respondent no.1-plaintiff no.1
had become lunatic in 1964 hence she was divorced and she
used to reside with her brother at Balapur, District Akola.
Thereafter, partition took place in between the four brothers
and the plot was divided in four parts amongst four sons of

Bicchu. It is further case of the appellant that after partition, Satru exchanged his share to Chandulal and took his share which he received in partition which is the suit property. Subsequently, Satru made oral gift in favour of the appellant-defendant no.1 and since then he had become owner and is in possession of the suit property from 1980. Alternatively, it is the defence of the appellant that he has perfected his title by adverse possession.

The learned trial Judge framed issues and the parties went for trial. The learned trial Judge recorded a finding that the appellants and other defendants took forcible possession of the suit property. The court below, on the touchstone of principle of law, which could be applied to the given set of evidence, found that the defendant failed to prove that he has perfected his title by adverse possession. Consequently, a decree for possession was granted in favour of the plaintiff.

Felt aggrieved by said judgment and decree of possession, the appellant preferred an appeal before the the appellate Court at Chandrapur and the learned District Judge-I, Chandrapur dismissed the appeal.

Mrs. Sirpurkar submitted that it is not in dispute in between the parties that a partition took place amongst those four brothers and one share was allotted in favour of Chandulal. She submitted that though it is the case of the appellant that Chandulal's wife original plaintiff no.1 became lunatic and left the house after the divorce, there is no evidence available on record except the bald words in the

written statement.

According to the appellant, after partition, there took exchange in between Satru and Chandulal who swapped their shares with each other and Satru made oral gift of Chandulal's property in favour of the present appellant. Both the Courts below recorded a finding of fact concurrently that there exists no evidence to show that there was any exchange between Satru and Chandulal. Further, no circumstances are brought on record exhibiting that Satru and Chandulal swapped their respective shares. Therefore, without there being any reason, it is difficult to accept that Satru and Chandulal exchanged their respective shares which were allotted to them in partition of 1976.

Gift is governed by the provisions of Section 123 of the Transfer of Property Act. Further, it is not the case of the appellant that the value of the suit property was below Rs.100/-. Therefore, it was compulsorily registrable document as envisaged under Section 18 of the Registration Act. In my view, both the Courts below correctly recorded a finding that the appellant cannot claim title over the suit property by virtue of the oral gift.

Insofar as the alternate plea of adverse possession is concerned, in my view, the said issue is no more res integra in view of the law laid down by the Hon'ble Supreme Court in the matter of **Dagdabai (Dead) By LRs. Vs. Abbas @ Gulab Rustum Pinjari**; reported in **2017 (5) SCALE 22**. In the aforesaid reported case, the respondent before the Hon'ble Apex Court claimed ownership on two counts; (i)

That he became the owner of the suit property by virtue of inheritance since he was the adopted son of Rustam Tatthu Pinjari and (ii) He denied ownership of the plaintiff Dagdabai and set up a plea of adverse possession to claim the ownership over the suit land.

In the aforesaid facts, the Hon'ble Apex Court in paragraph 21 observed as under:

“In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well-settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.”

The Plea of adverse possession is essentially a plea based on facts. The party claiming the same has to prove the same on the basis of the pleadings and evidence. In the present case, both the Courts have concurrently recorded a finding of fact that the appellant has failed to prove his adverse possession.

The aforesaid discussion, in my view, the present appeal does not involve any substantial question of law. The same is therefore dismissed however without any costs.

JUDGE

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