

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Second Appeal No.396 of 2016
[Lilabai @ Laxmibai Krishnaji Moon Vs. Dnyaneshwari Tukaramji Lohave]

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

Court's or Judge's orders

Ms. A. R. Khare, Adv., for the appellant.
Mr. S. A. Radke, Adv., for respondent.

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CORAM : A. S. CHANDURKAR, J.
DATE : 19th December, 2017

This appeal has been filed by the original plaintiff who is aggrieved by the dismissal of suit for a declaration and permanent injunction and the further decree passed in the Counter-claim filed by the defendant for possession.

It is the case of the plaintiff that in the year 1987, one Mrunalini Chincholkar had agreed to sell suit field to her at the rate of Rs. 9,101/- per acre. Earnest amount of Rs.2,000/- was paid and possession was also handed over. However, on 21st March, 1988, the suit field was sold in favour of defendant. The plaintiff continued in possession and, therefore, the same became adverse against the defendant. As there was a threat to the

plaintiff's possession, a suit for perpetual injunction along with declaration came to be filed.

The defendant in the Written Statement relied upon the sale-deed dated 21st March, 1988 and pleaded that the plaintiff was directed to cultivate the suit land as the defendant was residing at Nagpur. She claimed symbolic possession of the suit property and also filed a counter-claim seeking possession.

The trial Court recorded a finding that the possession of the plaintiff was not adverse to that of the defendant. The agreement in the year 1987 was not proved. Accepting the sale-deed dated 21st March, 1988, the suit was dismissed and counter-claim was allowed. The first appellate Court confirmed that decree.

The learned counsel for the parties have been heard on the following substantial question of law:-

“Whether the counter-claim filed by the respondent herein seeking possession of the suit property was filed within limitation?”

It is submitted on behalf of the plaintiff that her possession since 1987 is uninterrupted. This was clear from the certificates at Exhs.42 and 43. The various admissions of the defendant clearly indicated that

possession of the plaintiff was open and hostile and, therefore, against the interest of the defendant. The counter-claim having been filed on 24th January, 2008 was almost after twenty years of the sale-deed dated 21st March, 1988. The same was, therefore, barred by limitation and the decree could not have been passed.

On behalf of the defendant, it is submitted that the sale-deed dated 21st March, 1988 was admitted by the plaintiff. The stamp papers were purchased by the plaintiff's husband. In his deposition, he admitted that the cultivation was on behalf of the defendant who was residing at Nagpur. The documents [Exhs.42 and 43] were got prepared by the plaintiff in a manner contrary to law. There was no other evidence to show hostile possession of the plaintiff. Reliance was placed on the decision in **Gurdwara Sahib Vs. Gram Panchayat Village Sirthala & another** [(2014) 1 SCC 669].

After hearing the respective counsel and after perusing the records of the case, it is found that the plaintiff's husband in his deposition clearly admitted that the possession of the plaintiff was with the consent of the defendant who was related to them. The defendant was residing at Nagpur and hence the plaintiff was directed to cultivate the suit land. He further admitted in his deposition at Exh.48 that despite being aware of the sale-deed dated 21st March, 1988 in favour of the defendant, no steps were taken to have the earlier

agreement enforced. He further admitted that possession was with the plaintiff since the year 2005. In the light of these admissions by the plaintiff's husband, it cannot be said that the plaintiff enjoyed open, hostile and adverse possession to that of the defendant on the basis of the agreement of 1987. The finding recorded by both Courts is that the plaintiff came in possession in the year 2005 and hence the counter-claim filed immediately thereafter was not barred by limitation. Considering the entire evidence on record, I do not find that the plaintiff has proved that the counter-claim was barred by limitation. The findings recorded are based on evidence on record. Hence, the substantial question of law is answered in the affirmative and against the plaintiff.

Consequently, the appeal stands dismissed with no order as to costs.

Judge