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

SECOND APPEAL NO.431 OF 2017
AND
SECOND APPEAL NO.432 OF 2017

DEEPAK S/O DASHRATH MADNEKAR
VS
ABDUL SAMAD ABDUL KADAR

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

Shri R. L. Khapre, Advocate for the appellant.
Shri Nitin A. Vyawahare Advocate for the respondent.

CORAM : A.S. CHANDURKAR, J.
DATED : AUGUST 18, 2017.

Since both these appeals arise out of the judgment of the first appellate Court dated 11-4-2017 which in turn is a common judgment, they are being decided together by this order.

The appellant is the original plaintiff in Regular Civil Suit No.21 of 2009 that was filed for a declaration that he had title to the suit property along with relief of perpetual injunction. The respondent herein had subsequently filed Regular Civil Suit No.324 of 2010 seeking declaration of his title along with possession of the suit property.

It is the case of the appellant that he was in possession of 400 sq. ft. of land in plot No.19 on which he had erected a temporary structure. He claimed to be in possession since 3-10-1985. According to him, the suit property was initially owned by one Pandurang Ganorkar. However, that sale deed was

a sham and bogus sale deed. As the plaintiff was in continuous possession he had perfected his title by way of adverse possession.

The respondent, in turn, filed suit for possession based on title. According to him, he had purchased the suit property in the year 2008 from said Pandurang Ganorkar and, therefore, was entitled for possession.

Both the suits were tried together and after the parties led evidence, the suit filed by the appellant was dismissed and one filed by the respondent was decreed. The appellate Court has maintained the said adjudication.

Shri R. L. Khapre, learned Counsel for the appellant submitted that the respondent had failed to prove the title on the basis of aforesaid sale deeds. The respondent ought to have proved his title and he could not be expected to succeed on the basis of weakness in the appellant's case. Even if sale deeds were proved, the contents thereof were not proved. According to him, the appellate Court did not advert to these aspects while dismissing the appeals.

Shri Nitin Vyawhare, learned Counsel for the respondent supported the impugned judgments. According to him, both the sale deeds at Exhibits-25 and 26 were duly proved. The appellant in the suit admitted that the suit property was initially owned by Pandurang Ganorkar. On the title being so admitted, it could not be said that the appellant had become owner by way of adverse possession.

Having perused the impugned judgments alongwith

evidence led by the parties, it can be seen that the respondent claimed title from Pandurang Ganorkar. This was on the basis of sale deed at Exhibit-26. During the course of the proceedings the plot was sought to be measured but this was opposed by the appellant. While the respondent's sale deed is for area admeasuring 1400 sq. ft., the appellant claims to be in possession of 400 sq. ft. It has not been shown that his possession was hostile to the real owner. The necessary ingredients of proving adverse possession have not been satisfactorily shown by the appellant. Hence, I do not find that the appellate Court committed any error while dismissing both the appeals.

No substantial questions of law arise. Appeals are, therefore, dismissed. No costs.

At this stage, Shri R. L. Khapre, learned Counsel seeks grant of time to vacate the suit property. This request is opposed by the learned Counsel for the respondent. As the appellant is in possession since long, he is granted time to vacate the suit property by the end of December, 2017. This is subject to filing an undertaking in this Court within a period of three weeks that such possession shall be handed over by the end of December, 2017.

JUDGE

/MULEY/