

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

SECOND APPEAL NO.375 OF 2017

VASANTA S/O TANBA VAIDYA
VS
MADHUKAR S/O VITTHALRAO THAKRE & OTHERS

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

Court's or Judge's orders

Shri S. Y. Deopujari, Advocate for the appellant.
Shri Abhay Sambre, Advocate for respondent no.2.

CORAM : A.S. CHANDURKAR, J.
DATED : AUGUST 08, 2017.

The appellant is the original defendant who is aggrieved by the decree of the trial Court declaring the original plaintiffs as owners of the suit property and directing the defendant to hand over possession of the same to the plaintiff.

It is the case of the plaintiffs that the field Gut No.14 admeasuring 12 Hectares 28R was initially owned by one Dauji Thakre. The plaintiffs as legal heirs succeeded to said property. One of the daughters of said Dauji Thakre namely Bulkabai was married with the father of the defendant. The defendant, therefore, was assisted in cultivating the land. According to the plaintiffs, in the year 1999, the defendant borrowed a loan by mortgaging the suit property and posing himself to be the owner thereof. The plaintiffs, therefore, after issuing notice filed suit for possession of the suit property.

In the written statement, the defendant denied that

the suit field was ancestral property of the plaintiffs. It was further denied that after the death of Vitthal and Keshav, the plaintiffs had become owners thereof. It was pleaded that the plaintiffs should prove their ownership as the defendant was in possession from 1975-76 onwards. He claimed title on the basis of adverse possession.

The trial Court after considering the evidence on record held that the plaintiffs were owners of the suit property and the defendant had not proved his ownership through adverse possession. The appellate Court has confirmed this finding.

Shri Deopujari, learned Counsel for the appellant submitted that the evidence on record indicated the defendant's possession since 1975-76. His long standing possession had become adverse to that of the plaintiffs and therefore, the defendant had perfected his title. He submitted that the revenue entries indicated the defendant's possession for a long period. The suit as filed was barred by limitation as it was filed in the year 2008. He referred to the pleadings of the defendant and his evidence to submit that the title of the plaintiffs was admitted and, therefore, he had become the owner by way of adverse possession. It was then submitted that the plaintiff no.3 died during pendency of the suit and her legal representatives were not brought on record. According to him, only the plaintiff no.2 was examined and, therefore, both the Courts erred in relying upon this evidence for decreeing the suit. He placed reliance upon the judgment in *Satyabhamabai Wasudeo Dhanjode and others 2004 (1) Mh.L.J.*

1093 and submitted that the impugned judgments were liable to be set aside.

Shri Abhay Sambre, learned Counsel for the respondent no.2 supported the impugned judgments. According to him, it was found by both the Courts that the defendant had not admitted the ownership of the plaintiffs. The defendant was in cultivating possession and he had not disclosed as to since when his possession had become adverse. Mere long standing possession was not sufficient to give title to the defendant. He also referred to the pleadings of the defendant to indicate that the defendant had denied the title of the plaintiffs. It was then submitted that the proceedings had abated before the appellate Court as the defendant had not brought on record the legal heirs of the plaintiff no.3. The findings recorded by both the Courts were findings of fact and, therefore, no interference was called for.

I have heard the learned Counsel for the parties at length. I have also perused the pleadings of the parties. The evidence on record indicates that Dauji Thakre was the owner of the suit property and the plaintiffs had succeeded to him being sons of Vitthal and Keshav. In the written statement in para 14, the manner in which the title was claimed by the plaintiffs was denied and it was further pleaded that this title should be duly proved. In para 6, it was denied that the suit field was ancestral property and that after the death of Vitthal and Keshav, the plaintiffs had become owners. It is further pleaded that since 1975-76, the defendant is in possession of the suit property. For the purpose of

making out a case of ownership on the basis of adverse possession, it is first necessary that the ownership of the lawful title holder should be admitted and thereafter it has to be shown that the possession of the person claiming adverse possession was hostile, open as well as adverse to the true owner. The possession in denial of the owner's title must be physical and continuous. This position is clear from the decision in *A. S. Vkiyasagar vs. S. Karunanandam* 1995 Supp (4) SCC 570 and *T. Anjannappa and others vs. Somalingappa and another* (2006) 7 SCC 570. In the present case, the evidence on record is not sufficient to indicate that the defendant had first admitted the ownership of the plaintiffs and thereafter continued in possession in hostility and against the real owners. Mere continuation in cultivating the possession would not be sufficient to confer title by way of adverse possession especially when the parties are related to each other. The date on which such possession became adverse is also required to be specifically pleaded. The limitation as prescribed by Article 65 of the Limitation Act is twelve years from the date the possession has become adverse. In the present case, the pleadings or evidence are not of such nature that can prove the defence of adverse possession by the defendant. The decision relied upon by the learned Counsel for the appellant is therefore distinguishable.

In so far as the death of plaintiff no.3 in the year 2010 is concerned, it is to be noted that she was arrayed as a respondent in the appeal after which the proceedings abated against her. The other plaintiffs being legal heirs of Vitthal and Keshav, her estate

was sufficiently represented and therefore, it cannot be said that the decree as passed suffers from any irregularity. I find that both the Courts have on a proper appreciation of the evidence on record held the plaintiffs entitled for possession. It has been found that the pleadings and the evidence on record is insufficient to hold that the defendant had perfected title by adverse possession.

In view of aforesaid, I do not find that the appeal raises any substantial question of law. The second appeal is therefore, dismissed. No costs.

JUDGE

/MULEY/