

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 690 OF 2018

- 1] Narmadabai Soma Bhoi
Age 76 years, Occ. Household
- 2] Maharu Soma Bhoi (Deceased)
through his legal heirs
- 2-A] Aruna Maharu Bhoi
Age 50 years, Occ. Household.
- 2-B] Asha Maharu Bhoi
Age major, Occ. Education.
- 2-C] Moni Maharu Bhoi
Age Major, Occ. Education.
- 2-D] Ishwar Maharu Bhoi
Age major, Occ. Education.
- 2-E] Bablu Maharu Bhoi
Age major, Occ. Education.
- 2-F] Sagar Maharu Bhoi
Age Major, Occ. Education.
- 3] Fatru Soma Bhoi
Age 43 years, Occ. Business.
- 4] Santosh Soma Bhoi
Age 42 years, Occ. Business.
- 5] Suresh Soma Bhoi
Age 44 years, Occ. Business.
- 6] Dagubai Ashok Bhoi
Age 45 years, Occ. Household.

All R/o. Dharangaon, Ta. Dharangaon,
District Jalgaon.

.. APPELLANTS
[ORIGINAL DEFENDANTS]

VERSUS

Lotan Makdu Bhoi,
Age 62 yeares, Occ. Business,
All R/o. Lohar Galli, Dharangaon,
Tq. Dharangaon, Dist. Jalgaon.

.. RESPONDENT
[ORIGINAL PLAINTIFF]

WITH

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All R/o. Dharangaon, Ta. Dharangaon,
District Jalgaon.

.. APPELLANTS
[ORIGINAL DEFENDANTS]

VERSUS

- 1] Lotan Makdu Bhoi,
Age 62 years, Occ. Business,
All R/o. Lohar Galli, Dharangaon,
Tq. Dharangaon, Dist. Jalgaon.
- 2] Mandabai Khandu Bhoi
Age 79 years, Occ. Business,
All R/o. Lohar Galli, Dharangaon,
Tq. Dharangaon, Dist. Jalgaon.
- 3] Sau. Shantabai Kalu Bhoi
Age 69 years, Occ. Business.
All R/o. Amalner
Tq. Amalner, Dist. Jalgaon.

.. RESPONDENT
[ORIGINAL PLAINTIFF]

Mr. V.B. Patil, Advocate for appellants
Mr. U.S. Malte, Advocate for respondent No.1 caveator.

CORAM : V.L. ACHLIYA, J.
DATE : 11TH OCTOBER, 2018.

PER COURT :-

- 1] Being aggrieved by the decision rendered by the courts below,
the appellants/original defendants have preferred these second appeals,
challenging the decree passed in favour of plaintiff to declare him as owner
of suit property and rejection of counter claim of appellants/defendants.

2] Heard learned counsel appearing for the appellants and respondents. Perused the judgment and decree passed by the trial court as well as appellate court.

3] The respondent/plaintiff had filed suit bearing RCS No. 20 of 1991 seeking a relief of declaration and possession, with specific contention that he is the owners of suit property. The plaintiff claimed title to the suit property on the basis of registered sale deed dt. 4.8.1928 executed in favour of plaintiff. It is claimed that father of the plaintiffs namely Makdu Jayram Bhoi purchased the suit property from one Daulibai w/o Shama for a valuable consideration of Rs. 100/-. Since the date of execution of sale deed, the father of the plaintiff was in possession. After the death of plaintiff's father, the plaintiff became the owner of the suit property. Upon death of father of plaintiff, the plaintiff and his sisters are shown as legal heirs of deceased Makdu. The defendant No.1 claims to be the close relative of the plaintiff and belongs to the same caste. She being a poor and helpless woman, requested plaintiff for temporary occupation of the suit property for a period of 12 months. On 14.4.1988, the defendant No.1 was allowed to occupy the property as a gratuitous licensee of plaintiff for a period of 12 months. Since the defendant No.1 failed to remove herself from the suit property, upon expiry of licence period of 12 months a notice came to be issued on 19.1.1990. The defendant No.1 responded to the notice and denied the ownership of the plaintiff over the suit property and refused to hand

over possession. In that view, plaintiff constrained to file the suit for declaration and possession of the suit property.

4] The defendants filed written statement and resisted the suit claim and also filed a counter claim seeking declaration and ownership of suit property in their favour. The defendants claimed that suit property is in their possession since more than 62 years. They claimed that one Shama Bhoi was the original owner of the suit property that too to the knowledge of plaintiff. After the death of Shama, the property was transferred and came in possession of his wife Daulibai and his son Manik. The deceased Manik was the father-in-law of defendant No.1 Narmadabai. In the year 1928, same was purchased by Makdu. In the year 1958, Makdu Jayram gave suit property to Manik shama by oral gift. In the year 1984, Manik Shama died. The defendant No.1 and her husband were residing since beginning with Makdu Jayram i.e. father of plaintiff. By virtue of the oral gift made in the year 1958, they are enjoying the suit property as the owner thereof. It is further claimed that as the defendants are residing in suit property for more than 12 years, they became the owner of the suit property by way of adverse possession.

5] In support of the claim, the plaintiff has stepped into the witness box and deposed as per his case and also produced documentary evidence such as sale deed (Exh.48) and other documents. Although defendants have filed counter claim and sought a decree of declaration as the owner of the property, the defendants have not stepped into witness box

nor adduced any evidence. The trial court has observed that though the case was posted for recording of evidence of defendants for a period of about 5 to 6 years, still defendants have failed to adduce evidence. Ultimately, the trial court has decided the suit on merit and passed the decree in favour of the plaintiff and dismissed the counter claim of the defendants. The plaintiff has been declared as the owner of the suit property and further directed defendants to hand over possession of the property to plaintiff. Being aggrieved, the appellants had preferred two appeals, one challenging the decree in favour of plaintiff and another against dismissal of counter claim filed by defendants. The appeals were registered as RCA No. 166 of 2011 and 167 of 2011. Both the appeals were dismissed vide judgment and order dated 25.10.2017 passed by the learned District Judge-2 Jalgaon. Being aggrieved, the present appellants have filed these appeals.

7] In short, it is the contention of the learned counsel for the appellants that though the plaintiff has approached with the case that the defendants were permitted to occupy the premises as a gratuitous licensee for a period of 12 months and licence was created in presence of two witnesses, the plaintiff has failed to produce the licence deed. So also, plaintiff has not examined the attesting witnesses to the alleged licence deed. It is further submitted that as defendants could not adduce evidence, the 1st Appellate Court ought to have remanded the case to the trial court to enable defendants to lead evidence in support of their case. It is contended that in the light of the pleadings and evidence on record, the

defendants have made out a case to hold that the defendants have perfected their title to the suit property by way of adverse possession.

8] On the other hand, learned counsel for the respondent/plaintiff supported the judgment and decree passed by the courts below and submitted that there are concurrent findings of fact recorded by the courts below in favour of respondent/plaintiff and appellants have made out no case to entertain these appeals. It is submitted that no substantial question of law has been raised in the appeal so as to entertain the second appeal. It is submitted that though the defendants were given sufficient opportunity to lead evidence, they have failed to adduce evidence. In absence of any evidence, no case of adverse possession has been made out in favour of defendants and the trial court as well as the appellate court have rightly observed that the defendants have failed to prove that they have perfected their title to the suit property by way of adverse possession. It is submitted that the plaintiff has proved his case by leading cogent and convincing evidence and more particularly, by producing registered sale deed, established title of the plaintiff over the suit property w.e.f. 4.8.1982.

9] I have carefully examined the rival submissions in the light of pleadings of the parties and evidence adduced in the case. I have no hesitation to observe that the appeals filed are devoid of merit and substance therein. No substantial question of law has been raised to entertain the second appeals. The judgment and order passed by the courts below are well reasoned and consistent with the rival pleadings and

evidence adduced in the matter. The trial court has observed that though the case was adjourned for 5 to 6 years for recording evidence of defendants, the defendants have failed to adduce evidence. In absence of any evidence being adduced on the part of defendants to show that they became owner of the suit property by way of adverse possession, and there is no serious challenge to the evidence adduced by the plaintiff, no fault can be attributed to the decisions rendered by the courts below. There are concurrent decisions on facts recorded by the courts below in favour of appellants. It is nowhere the case of appellants that the trial court as well as appellate court has misread or ignored any material evidence or there is perversity in the findings recorded by courts below. In second appeal the appellate court cannot interfere with findings on facts recorded by courts below unless a case of non-consideration of any material evidence or misreading of evidence is made out. No substantial question of law has been raised in appeals. In that view, no case is made out to entertain the appeals. I am therefore not inclined to admit the appeals. The appeals stand dismissed.

10] The civil application, if any, filed and pending, same stands disposed of in terms of order passed in appeals.

[V.L. ACHLIYA]
JUDGE

grt/-