

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

SECOND APPEAL NO.210 OF 2018 WITH
CVIL APPLICATION NO.3751 OF 2018

Shaikh Kalanji Shaikh Moti, Died L.Rs.
Shahanoorbi w/o Shaikh Khaja & others ...APPELLANTS

VERSUS

Mahadu s/o Baba Raut, Died L.Rs.
Sushila w/o Shamraoji Kale & others ...RESPONDENTS

.....
Shri L.V. Sangeet, Advocate for appellants
Shri P.R. Katneshwarkar, Advocate for respondents No.1B, 1C & 1E
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CORAM: A.M. DHAVALÉ, J.

DATED : 23rd October, 2018.

ORAL ORDER :

1. Heard learned Advocates for the parties. The appellants are original defendants. There are concurrent findings against them in the judgment & decree passed in Regular Civil Suit No.1/2008, by learned Civil Judge, Junior Division, Mahur and in Regular Civil Appeal No.171/2012, by District Judge-5, Nanded, by judgment and order dated 4.12.2017. The respondents had filed suit for possession on the basis of title. The title of the plaintiffs is not in dispute. The defendants had earlier claimed

that they were in possession of the suit land. They were put in possession of the suit land on 24.2.1962 under the agreement to sell. The defendants filed suit for specific performance. In the said suit, it was held that the agreement to sell and the possession of the defendants were not proved. The said decree was confirmed by District Court and the High Court, and the Special Leave Petition was also dismissed.

2. Thereafter, again on 1.1.1982, there was some agreement under which the defendants are claiming to be in possession. The plaintiffs claimed that the defendants dispossessed them in 1992 and, therefore, the suit came to be filed in the year 2002. The defendants alternatively claimed ownership right by way of adverse possession. It was also claimed that, though the suit for specific performance was time barred, they were entitled for protection under the doctrine of part performance.

3. Both the Courts below held that, the defendants failed to prove their case of adverse possession. The learned first appellate Court in para 30 of the judgment has held that there is no pleading and evidence that the defendants have become owners of the suit land by adverse possession on particular day.

4. Admittedly the possession of the defendants was initially claimed to be permissible. Since the agreement to sell and claim for specific performance have failed, the defendants cannot claim retention of possession under the doctrine of part performance.

5. As far as claim of adverse possession is concerned, the defendants should have specifically disclosed on which date their permissible possession was converted into adverse. There is neither pleading nor evidence to support the stand of adverse possession.

6. Learned Advocate Mr. Sangit argued that the case of the plaintiffs that they were dispossessed in 1992 is false and the defendants are in possession since 1982. The suit should have been filed within 12 years from the date of dispossession.

7. This is a suit based on title. Admittedly the plaintiffs are owners of the property, it is governed by Article 65. Though the period of limitation is 12 years under Article 65, the starting point is the date on which defendants' possession becomes adverse. As there is no pleading and evidence that on a particular day the possession of the defendants became adverse to the true owner, the defendants cannot claim ownership by

adverse possession. Both the lower Courts have rightly considered the pleadings and evidence on this point and there are concurrent findings. The question of adverse possession is a pure question of facts. In the light of concurrent findings, there is hardly any scope to interfere with the findings on question of facts. No perversity has been shown. Neither there is argument that inadmissible material was considered or admissible material was ignored. Both the lower Courts have followed the established principles of law and the precedents with regard to the claim based on adverse possession. I find no scope to interfere. No substantial question of law is involved. Hence, the Second Appeal is dismissed in limine.

8. In view of dismissal of Second Appeal, Civil Application No.3751/2018 stands disposed of.

(A.M. DHAVALÉ)
JUDGE

fmp/