

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

39 SECOND APPEAL NO. 805 OF 2018
WITH
CA/12106/2018 IN SA/805/2018

SHIVAJI VASANT RAJEBHOSALE
VERSUS
MURARJI BABAJI RAJEBHOSALE AND OTHERS

....
Advocate for Appellant : Mr. Sanket S. Kulkarni h/f Mr. Dilip B. Rode
Advocate for Respondent No.1 : Mr. Nilkanth D. Batule
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**CORAM : V.L. ACHLIYA, J.
DATED : 08th OCTOBER, 2018**

PER COURT:-

1. Being aggrieved by the concurrent decisions rendered by the Courts below, the appellant – original defendant has preferred this second appeal.
2. Heard the learned counsel for the appellant and respondent no.1. Perused the impugned judgments passed by the courts below as well as the judgment and order passed in R.C.S. No. 207/2006 dated 29.03.2010 by the Joint Civil Judge, Junior Division, Shevgaon, Dist. Ahmednagar.
3. On due consideration of the submissions advanced, I am of the view that no case is made out to entertain the second appeal. It is admitted position that the appellant – original defendant is in possession of the suit premises owned by the

respondents. The appellant had filed suit bearing R.C.S. No.207/2006 as against the respondents seeking a decree of prohibitory injunction pleading therein that appellant is in possession of suit property by virtue of oral agreement of sale. On the basis of the oral agreement, the appellant got mutated his name in the record of the village panchayat Mungi, Tq. Shevgaon. Admittedly, no sale deed executed in favour of appellant. Only on the basis of threat of dispossession the decree of prohibiting defendants granted in favour of appellant.

4. Subsequent to the judgment and order dated 29.03.2010, passed in R.C.S. No. 207/2006, the respondents have taken the legal recourse by filing civil suit registered as R.C.S. No.313/2010 for possession of the suit property. Before filing the suit, the plaintiff i.e. the respondents had issued notice directing the appellant – defendant to hand over the possession of the suit property. Since the appellant – defendant has failed to hand over possession of the suit property, the respondents – plaintiffs have filed said suit. On due consideration of the rival pleadings and evidence adduced in the case, the trial court has decreed the suit and passed the decree of possession in favour of the plaintiffs-respondents and as against the defendant-appellant. Being aggrieved, the appellant preferred the appeal before the District Court, Ahmednagar. The appellate court, vide

judgment and order dated 23.07.2018 passed in R.C.A. No.341/2015 pleased to dismiss the appeal and confirmed the judgment and order passed by the trial court. Being aggrieved, the appellant has preferred this appeal.

5. Mr. Sanket Kulkarni, learned counsel for the appellant strenuously contended that the judgment and order passed by the courts below are not sustainable in law. It is contended that the decree passed in R.C.S. No.207/2006 has attained finality. The trial court has erred in passing the decree and the appellate court in confirming the same by ignoring the decree passed in R.C.S. No. 207/2006. It is further contended that the plea of adverse possession was also not properly considered by the courts below.

6. On the other hand, the learned counsel representing the respondents supported the judgment and decree passed by the trial court and confirmed in appeal by the appellate court. It is contended that the appeal preferred is without merit. Absolutely no substantial questions of law raised in the appeal so as to entertain the appeal. It is contended that the appellant had approached with a case that he has entered into an oral agreement to purchase the land for consideration of Rs. 10,000/-. The averment made in that behalf found to be vague. No particulars were given as to when such agreement has

taken place. The decree in R.C.S. No.207/2006 was passed only on the basis that the appellant found to be in possession of the property. It is contended that as the prohibitory injunction against the respondents was only granted, restraining the respondents from taking possession of suit property without following the due process of law. Thereafter the respondents have filed civil suit seeking decree of possession and thereby followed the due process of law to take possession of suit property by lawful means. It is pointed out that the appellant has not disputed the title of the respondents as owners of the property. The appellant has failed to make out any case to continue to hold his possession. It is further pointed out that the appellant has also not taken proper plea of adverse possession.

7. Having considered the submissions advanced in the light of rival pleadings and the judgment and orders of the courts below, I am of the view that absolutely no case is made out to entertain the second appeal. The decree passed in R.C.S. No.207/2006 dated 29.03.2010 confines to protecting the possession of the appellant to the extent that same not be disturbed without following the due process of law. Only for the reason no specific words appear in the decree passed by the trial court, that the plaintiff be not dispossessed without following the due process of law, the decree cannot be interpreted in the sense

that the defendants i.e. respondents have been restrained in perpetuity from taking over the possession of the property even by lawful means. The decree passed in R.C.S. No.207/2006 confines not to dispossess the appellant without following the due process of law. In that view, the trial court as well as the appellate court has rightly held that the decree passed in R.C.S. No.207/2006 no way prohibit the court to entertain the suit and grant relief in favour of the respondents-original plaintiffs.

8. So far as the submissions made that the trial court as well as the appellate court failed to consider the case of the appellant – defendant of adverse possession, I am of the view neither there is specific plea nor any evidence adduced by defendants-appellants to accept the contention of the appellant-defendant that he has perfected his title over the suit property by way of adverse possession. The averments made in the written statement are vague. As discussed, the appellant – defendant has himself taken a plea that he has entered into an oral agreement to purchase the suit property for a consideration of Rs.10,000/- and on the basis of said oral agreement the respondents had put him in possession of the property, which itself runs contrary to the case of the appellant that he has perfected his title to suit property by way of adverse possession. In that view, no case is made out to entertain the appeal.

Accordingly, the appeal raises no substantial questions of law. I am therefore not inclined to admit the appeal. The appeal is dismissed.

9. In view of dismissal of the appeal, no cause survives to prosecute civil application no. 12106/2018 seeking stay to the impugned judgment and decree. Therefore, the civil application stands disposed of in terms of order passed in appeal.

10. At this stage, the learned counsel for the appellant urged to grant time till 31st December 2018 to vacate the premises and hand over the possession of the suit property to respondents. Learned counsel for the respondents opposed the request and submitted that the respondent no.1 is 85 years old and spent long time in prosecuting the legal remedy for seeking possession of the suit property.

Considering the fact that some time will be required to shift from the premises, the appellant is granted time till 26.11.2018 to vacate the premises on condition to file written undertaking before the executing court within two weeks from today to the effect that appellant will vacate the premises and handover peaceful possession of suit premises to respondents on 26.11.2018 at 11.00 a.m. and further deposit the arrears of amount in terms of the decree. In case such undertaking is filed, the executing court is directed to defer the execution of warrant

of possession till 26.11.2018. However, if the appellant failed to file written undertaking and deposit of arrears as directed, the executing court may proceed to take necessary steps to get the decree executed. So also in the event of breach of undertaking, the respondents will be at liberty to proceed with the execution as well as to initiate contempt proceeding against the appellant.

(V.L. ACHLIYA)
JUDGE

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