

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
SECOND APPEAL NO.415 OF 2017  
WITH  
CIVIL APPLICATION NO.809 OF 2017  
IN  
SECOND APPEAL NO.415 OF 2017**

Suresh Sadashiv Kumbhar ... Appellant.  
V/s.  
The State of Maharashtra  
and anr ... Respondents

Mr. Pradeep S. Gole, for the appellant.  
Mr. A.R. Patil, AGP for the respondent State.

**CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 31<sup>st</sup> JULY, 2018.**

**P.C. :**

1] Heard learned counsel for the appellant and learned AGP for the State.

2] This appeal is directed against the judgment and decree dated 28.7.2016, passed by Ad-Hoc District Judge, Satara, thereby dismissing Regular Civil Appeal No.343 of 2009, preferred by the appellant against the judgment and decree dated 7<sup>th</sup> August, 2009, passed by the Civil Judge Senior Division Satara, in R.C.S.No.281 of 1999.

3] The said suit was filed by the present appellant for declaration and perpetual injunction. The declaration was sought

relating to his becoming owner of the suit property by way of adverse possession and therefore, it was contended that the notice dated 31.5.1999, issued by the respondent for taking the possession of the suit land is illegal and hence respondent should be restrained from taking any action against possession of the appellant.

4] As per case of the appellant, he has purchased the suit land by registered sale deed dated 6.1.1990 from Jagannath Vishnu Kumbhar. The said land was given in possession of Jagannath's father Vishnu Kumbhar in the year 1946 for a period of five years on lease for running a brick kiln. The lease period was from 1<sup>st</sup> August, 1946 to 1<sup>st</sup> August, 1951. However, thereafter respondent did not take possession of the suit land, nor Vishnu Kumbhar or his son Jagannath Kumbhar paid any rent towards the said land. Thus, it was submitted that after expiry of the period of five years, Vishnu Kumbhar had become owner of the suit land by adverse possession. Thereafter the appellant has received the same on ownership by way of adverse possession. Hence when respondent claimed possession of the suit land by the notice dated 31.5.1999, the appellant was constrained to file this suit.

5] This suit came to be resisted by the respondent, denying that the appellant had become the owner of the suit land by way of adverse possession. It was contended that the sale deed executed by

Jagannath is illegal and hence the appellant is not entitled to claim any relief.

6] Both the trial Court and the Appellate Court, after appreciation of the evidence on record, were pleased to hold that the appellant has failed to prove that he has become the owner of the suit land by way of adverse possession and accordingly dismissed his suit.

7] While challenging the impugned judgments and orders of both the Courts below, the submission of learned counsel for the appellant is that both the Courts have not considered that even after expiry of the period of lease in the year 1951 itself, the appellant's predecessors Vishnu, his son Jagannath and thereafter appellant continued to be in possession of the suit land. The names of the appellant and his predecessor were entered into record of rights and therefore, the action taken by the respondent in the year 1999 for seeking possession of the suit land is clearly beyond the period of limitation.

8] In support of his submission, learned counsel for the appellant has relied upon the judgment of the Apex Court, in the case of **Kalika Prasad and another -vs- Chhatrapal Singh (dead) by Lrs, [AIR 1997 Supreme Court 1699]**, the facts of which are distinct and different. He also relied upon the judgment of the Gujarat High Court in the case of **Bhaniben Makanbhai Tandel -vs-**

**State of Gujarat and anr [1992 (1) G.L.H.93]**. The facts of the said case are also different from the facts of the present case. Both these authorities were cited before the first Appellate Court and the Appellate Court has considered them in detail and rightly distinguished the facts of both the cases.

9] In this appeal, the only issues which are advanced by learned counsel for the appellant is whether both the Courts below have committed an error in holding that the appellant has failed to prove his adverse possession and whether the suit is filed within the limitation.

10] Needless to state that, mere long standing possession cannot become as adverse, unless necessary ingredients relating to plea of adverse possession are satisfied. Those ingredients are that there must be assertion of hostile title to the knowledge of the original owner. Here in the case, there is no evidence proving such assertion of hostile title by the appellant to the knowledge of the respondent. Therefore, merely because appellant's predecessor continued to be in possession, even after expiry of the lease period which possession was permissive, the plea of adverse possession cannot be succeeded. The trial Court and the Appellate Court had, therefore, rightly held that the appellant has failed to prove the plea of adverse possession.

11] As regards the suit being filed beyond the period of limitation, needless to state that respondent being the owner of the suit property and the suit being based on title, unless appellant proves his plea of adverse possession, the suit cannot be said to be barred by limitation in any way. The cause of action for filing such suit arises only when a person in possession asserts hostile title. Mere entry of the name of the appellant in the record of right does not amount to assertion of hostile ownership. The law is also well settled that the entries in the revenue record are not the proof of title. There is no evidence to show that such entry was to the knowledge of the respondent and the appellant has asserted any hostile possession.

12] In such situation, there is absolutely no substantial question of law raised in the Second Appeal, for interfering in the impugned judgments and orders of the Courts below.

13] The Second Appeal, therefore, holds no merit and hence stands dismissed.

14] In view of dismissal of Appeal itself, Civil Application No.809 of 2017 becomes infructuous and the same is accordingly disposed off.

**[DR.SHALINI PHANSALKAR-JOSHI, J.]**