

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 201 OF 2015
WITH
CIVIL APPLICATION NO. 416 OF 2015

Maggie Bonet Castidina ...Appellant

Versus

Rocky Dennis D'Souza (deceased) Thr LRs ...Respondent

Mr. Pranil Sonawane, for the Appellant.

Mr. Ashok B. Tajane, for the Respondent.

CORAM: N. M. JAMDAR, J

DATED: 31 JANUARY, 2018

Oral Order:-

1. By this Second Appeal, the Appellant – original Defendant has challenged the judgment and order passed by the learned District Judge, Kalyan. By the impugned decision the learned District Judge allowed the appeal filed by the Respondent – Plaintiff and directed the Appellant to vacate the possession of the house no.71 (new House no.259), situated in gat no.229 and the some portion of the open area.

2. The Respondent – Plaintiff filed Regular Civil Suit No.50 of 1997 in the Court of Civil Judge, Junior Division, Sahapur. According to the Respondent – Plaintiff, the land gat no.229

admeasuring 0.79 R, situated at village Kalambe is owned by the Plaintiff. One Silesin Robert had approached the Plaintiff and sought permission for construction of a temporary shed. It was the case of the Respondent – Plaintiff that, there without being any title vested, the Applicant tried to get her name recorded in the revenue record. A Suit was filed for removal of encroachment and for recovery of possession. The Appellant filed written statement and contended that the Appellant had purchased the suit property from one Leena Dias by registered sale deed dated 9 February, 1989 and in that land Silesin, brother of Leena, had constructed a house. It was also the case of the Appellant, in the alternate, that the Appellant has perfected her title by way of adverse possession.

3. The learned Civil Judge, after considering the evidence on record, held that the Appellant did not prove that she was the owner of the house as well as the open area. The learned Civil Judge, however, dismissed the Suit filed by the Respondent – Plaintiff on the ground that there was no encroachment made by the Appellant. The Respondent – Plaintiff thereafter filed Civil Appeal No.64 of 2003, which was allowed by the impugned judgment and order.

4. After the learned Civil Judge recorded a categorical finding that the Appellant is not the owner in respect of the

house and the open area, the Appellant did not file any cross-objections. The learned Counsel for the Appellant submitted that there was a written partition between Silesin and his sister, the predecessor of the Appellant and thereafter his predecessor got title to the suit property, which was also conveyed to the Appellant. No such argument was advanced in the Courts below. The learned Counsel for the Appellant relied upon the decision of the Supreme Court in the case of *Jegannathan vs Raju Sigamani & Anr*¹, to contend that since this important piece of evidence was in possession of the Appellant, the learned District Judge ought to have remanded the proceedings. This submission cannot be accepted. The Suit was filed in the year 1997. No efforts have been made to bring any additional evidence on record even in the First Appeal. Even in this Court the Appeal is pending since the year 2015. No Civil Application is filed. Therefore, there is no error in the view taken by both the Courts that Appellant has failed to prove the title in his share.

5. Further, the learned Civil Judge noted the statements made by the predecessor of the Appellant that she had not obtained signatures of the legal heirs of her deceased brother before executing the sale deed. In reply she has stated that she was not aware that while executing the sale deed in favour of the

¹AIR 2013 (SC) 3788.

Appellant the suit house was standing in the name of the Plaintiff.

6. The learned Counsel for the Appellant then submitted that, the Court has placed the burden upon the Appellant to show her ownership which was incorrect as the burden ought to have placed on the Respondent – Plaintiff. As stated earlier, from the perusal of both the decisions, there is no such grievance made that the issue was wrongly cast and the burden was wrongly placed on the Appellant and also there were no cross-objections filed by the Appellant. It is, in fact, the learned District Judge nevertheless has examined the aspect of the title. The learned District Judge has noted the long standing entries in the records in the name of the Plaintiff. The Appellant had relied upon the sale deed executed in her favour by Leena Dias, but has stated earlier that the Appellant, even in the trial Court had failed to prove that the Appellant had become owner.

7. A finding of fact has been recorded by the learned District Judge that the suit house and open area is within gat no.229. In the written statement also the Appellant has referred to gat no.229. Therefore, once a finding is reached that the Appellant was not the owner of gat no.229 and that the suit house and open area was in gat no.229, there is no error committed by the learned District Judge in passing the impugned judgment and

order. In fact, the Appellant had taken a plea of adverse possession, in which it is inherent that the ownership is of the Respondent. In these circumstances, no substantial question of law arises. Second Appeal is dismissed.

8. The learned Counsel for the Appellant seeks continuation of the ad-interim order. The ad-interim order granted in this Appeal will continue for the period of eight weeks from the date the order is uploaded. The Appellant will not create any third party rights or part with possession.

9. In view of dismissal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

[N. M. JAMDAR, J.]