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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

***SECOND APPEAL NO. 746 OF 2016
with
CIVIL APPLICATION NO. 987 OF 2016***

Jankibai Kisanrao Kashid and Ors. ...Appellants/Applicants.

V/s.

Janardhan Rambhau Raut and Ors. ... Respondents.

Mr. Siddharth C. Wakankar for the Appellants/Applicants.

Mr. Jaydeep Deo for Respondents 1A to 1H.

CORAM : N.M. Jamdar, J.

DATE : 8 January, 2018.

Oral Order :-

By this Appeal filed by the Original Defendant, the judgment and order passed by the learned District Judge, Pune dated 29 April 2016 is sought to be assailed. By the impugned judgment and order the Principal District Judge has allowed the Appeal filed by the Respondent - Original Plaintiff and has dismissed the cross-objection filed by the Appellants. The learned Civil Judge by the judgment and order dated 30 March 2013 had dismissed the suit and had granted the counter-claim filed by the Appellants.

2. The Respondent – Plaintiff filed the Regular Civil Suit No. 309 of 2011 seeking a decree of possession and permanent and mandatory injunction against the Defendant – Appellants. According to the Respondent – Plaintiff, the Appellants had no right, title or interest in the suit land and had made encroachment thereupon and therefore, a decree of possession need to be granted so also mandatory and permanent injunction. The Appellants filed their written statement and took a stand that they have acquired interest in the suit property by virtue of being in adverse possession since the year 1982 and therefore, they cannot be evicted from the suit property. The Appellants also filed a counter-claim for a declaration that they have acquired ownership rights by virtue of being in adverse possession. The learned Civil Judge accepted the contention of the Appellants that they have proved their case of being in adverse possession and having become an owner by adverse possession, they cannot be evicted from the suit property and neither any relief of injunction can be granted in favour of the Respondent – Plaintiff. The learned Civil Judge accordingly dismissed the suit filed by the Respondent and granted the counter-claim filed by the Appellants by giving a necessary declaration. Civil Appeal No. 324 of 2013 was filed by the Respondent – Plaintiff in the District Court, Pune. The learned District Judge, after considering the material on record concluded that the Appellants were not in open and hostile possession, which is necessary for establishing the case of adverse

possession and consequently allowed the appeal and decreed the suit setting aside the grant of counter-claim. Thereafter, the present Second Appeal is filed.

3. The fact that the Appellants have taken a plea of adverse possession as their main defence, it is clear that the Appellants have no title to the suit property. The entire case therefore rests upon the plea that the Appellants are in open and hostile possession so as to constitute adverse possession. The law regarding adverse possession has been settled by various decisions of this Court and the Apex Court. Mere long standing possession is not sufficient to establish adverse possession. There has to be open and hostile acts designed to extinguish the title of the true owner. The acts done without the knowledge of the true owner do not constitute as ingredient of adverse possession. The Apex Court in the case of *L.N. Aswathama and Anr. V/s. P. Prakash*¹ and in the case of *A. Shanmugam V/s. Ariya Kshatriya Rajakula Vamasathu Madalaya Nandhavanan Paripalanai Sangam*² has summarized the ingredients to prove adverse possession. Heavy burden is cast upon the party claiming adverse possession and the acts must be such that a clear hostile animus is discernible therefrom.

4. It is the contention of the learned Counsel for the Appellants that the facts that the Appellants were in possession since

¹ (2009) 13 SCC 229

² (2012) 6 SCC 430

the year 1982 and that the revenue records were mutated in the name of the Appellants showing the Appellants as the owners and that the electricity connection was also in the name of the Appellants, are sufficient enough to establish the hostile animus. It was also contended that inspite of the Respondent – Plaintiff purchasing the property and the Appellants being witness thereto, the Appellants continued to be in possession, which itself constitutes hostile possession. It was also contended that the suit was filed beyond the period of limitation and this fact has not been considered by the learned District Judge. The learned Counsel for the Appellants relied on the decisions in the case of *Maruti Dagadu Charwad (D) through L.Rs. V/s. Shri Bhau Nama Gujar (D) through L.Rs.*³. The learned Counsel for the Respondents on the other hand relied upon the decisions in the case of *Balakisan w/o. Bansidhar Khandelwal & Ors. v/s. Govinda s/o. Shankar Udupure (dead) L.Rs.*⁴ and *Hemaji Waghaji Jat V/s. Bhikabhai Khengarbhai Harijan and Ors.*⁵ to contend that none of the factors urged by the Appellants can constitute adverse possession. He also relied upon evidence of Witness No. 5 – Sanjay Khedkar, the Officer from the village panchayat.

5. As far as the possession of the Appellants since the year 1982 is concerned, it is will established that mere longstanding

3 (2017) 3 ALL MR 247

4 (2010) 1 Mh.L.J.

5 (2009) 16 SCC 517

possession will not fructify into an adverse possession. The parties are related and the relations between them were cordial. The Appellants were given place to stay since they did not have any other place in the vicinity at that time and that the possession of the Appellants was permissible. As regards the mutation entry and the electricity connection upon which heavy reliance is placed by the Appellants, in the evidence the officer from the concerned village panchayat deposed that the entries were carried out on the basis of the tax receipt paid to the gram panchayat, and the entries were without notice to the Respondent – Plaintiff. Through the entries surreptitiously obtained, it cannot be said that the Appellants tried to extinguish the title of the Respondent – Plaintiff with full knowledge of the Respondent – Plaintiff. The Apex Court in the case of *A. Shanmugam* has observed that mere entries in ration card and house tax receipts will not constitute hostile animus sufficient to destroy the title of the true owner. Therefore, there is no error in the finding of the learned District Judge that the Appellants had failed to establish the case of having acquired any right in the property by way of an adverse possession.

6. Once this conclusion is reached, there is no question of any bar of limitation. For a suit filed for recovery of immovable property, based on title, the limitation would start running from the date on which the possession becomes hostile. Once the finding of

the learned District Judge that the possession of the Appellant had not become hostile, is confirmed, the suit cannot be stated to be barred by law of limitation. Since the Appellants have failed to prove any title to the suit property, they must hand over the same to the true owner.

7. In the circumstances, no substantial question of law arises. The Second Appeal is dismissed.

8. At the request of the learned Counsel for the Appellant, the ad-interim order which is operating in this Appeal will continue for a period of eight weeks.

(N.M. Jamdar, J.)