

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

**SECOND APPEAL NO. 756 OF 2017
WITH
CIVIL APPLICATION NO. 1483 OF 2017**

Mohan Kaka Sawant & Anr.	...	Appellants
V/s.		
Mangesh Ananda Sawant	...	Respondent

- Mrs.Shubhada S. Gokhale for the Appellants.
- Mr.Prabhakar M. Jadhav for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 13th JUNE, 2018.

P.C. :

1] Heard learned counsel for the Appellants and learned counsel for the Respondent.

2] This Second Appeal is preferred against the judgment and decree dated 31/07/2017 passed by Adhoc District Judge-1, Sangli, thereby allowing Regular Civil Appeal No.352 of 2012, which was preferred against the judgment and decree dated 30/04/2012 passed by the Civil Judge, Junior Division, Vita, in Regular Civil Suit No.6 of 2010.

3] By the said judgment and decree, the trial Court has dismissed the suit filed by the Respondent herein simpliciter for injunction; whereas the First Appellate Court has, by allowing the appeal, set-aside the said judgment and decree and decreed the Respondent's suit for injunction.

4] The only question of law, which according to learned counsel for the Appellant, arises in the instant case is pertaining to the issue of adverse possession. It is submitted by learned counsel for the Appellant that as per the mutual understanding arrived at between the parties, the father of the present Appellant No.2 has handed over a constructed building to the family of the Respondent. Accordingly, the entries were made in the Grampanchayat Record. In response thereto, the Respondent has also handed over some portion of the land admeasuring 60 feet in length from north-south and 76 ft. width from east-west out of the suit land Gat No.482 to the father of the Appellant No.2. It is submitted that since the year 1965 therefore the Appellant is in possession of the suit land. He is using the same for the purpose of his agricultural activities and hence, it was pleaded in the written statement in paragraph No.12 that the Appellant has become the owner of this portion of the land by way of adverse possession.

5] It is urged that in view of this plea taken in the written statement, the trial Court has framed the issue, as to, “whether the Appellant had become the owner of the suit land?” and has answered it in the affirmative. The Appellate Court has, however, not framed any such issue and has simpliciter decreed the suit, setting aside the well reasoned judgment of the trial Court and therefore, as the Appellate Court has not considered the plea of adverse possession, the substantial question of law arises in the matter, calling for interference in the Second Appeal.

6] Per contra, learned counsel for the Respondent has supported the judgment of the Appellate Court by submitting that the Appellate Court has considered the evidence on record including the contention of the Appellant that by way of mutual exchange, the Respondent has handed over the possession of the open land admeasuring 60 ft. in length and 76 ft. in width to the father of the Appellant. It is submitted that the Appellate Court has found that such relinquishment or partition, unless it is recorded in writing by a registered document, cannot have any legal effect and therefore, the Appellate Court has rightly held that there was no evidence to show that any such exchange has taken place and the Appellants were put in possession of the said portion of the suit land. According to learned

counsel for the Respondent, there is no sufficient pleading as to the plea of adverse possession and no sufficient evidence on record also. Therefore, the Appellate Court has, though not specifically framed the point for its determination to that effect, having considered the same in its discussion, allowed the appeal and rightly set-aside the judgment and decree of the trial Court.

7] Now, the law is well settled that as regards the plea of adverse possession, there has to be a specific pleading along with necessary particulars. Here, in the case, it may be true that the Appellants have taken a contention in paragraph No.12 of the written statement that the Appellants have become owners by way of adverse possession to the extent of 60ft. X 76 ft. out of Gat No.482 as the Appellants are in possession thereof since the year 1965. However, the very case of the Appellants is that they are in possession thereof on the basis of the mutual understanding arrived at between the parties and therefore, Appellant No.2 has become the owner thereof. On this basis, if Appellant No.2 is claiming title to the suit property, then it follows that this plea cannot be called as plea of adverse possession because in order to constitute plea of adverse possession the possession must be hostile to the knowledge of the real owner.

8] Here, in the case, the Appellants are not claiming

possession, which is hostile to the title of the Respondent or to the knowledge of the Respondent but they are claiming possession on the basis of the alleged mutual exchange understanding arrived at between the parties and therefore, on the basis of title or the owner thereof. Hence, once the Appellate Court has come to the conclusion that whatever mutual exchange or understanding arrived at between the parties cannot be legally recognized, as such exchange has to be on the basis of the registered document and once the Appellate Court has come to the conclusion that there is no evidence also to prove the possession of the Appellant over this particular portion of the suit land, then it was not necessary for the Appellate Court to consider the plea of adverse possession.

9] It is pertinent to note that in the trial Court also the Appellant has not called upon the Court to frame the specific issue relating to adverse possession. The issue framed by the trial Court is not pertaining to plea of adverse possession but as to whether on the basis of this mutual understanding arrived at between the parties, the Appellants had become the owner thereof. Therefore, in the trial Court also, the plea of adverse possession was not pressed as such and it appears that even before the Appellate Court also, Appellants had claimed ownership on the basis of the mutual understanding and not

the hostile title to the title of the Respondent.

10] Therefore, in the absence of sufficient pleadings on record and sans any evidence on record, if the Appellate Court has, on the basis of the case argued before it and also before the trial Court, came to the conclusion that without there being a registered document of exchange on record, neither the title can be said to be exchanged nor possession under the said exchange can be held to be proved and has thus set-aside the impugned judgment and order of the trial Court, in my considered opinion, no case is made out for interference in the appeal. At-least it cannot be said that there is any substantial question of law involved in the present Second Appeal. This Second Appeal therefore stands dismissed at the stage of admission itself.

11] At this stage, learned counsel for the Appellants requests to stay the operation and implementation of the order of this Court for a period of eight weeks. Learned counsel for the Respondent strongly resists the said prayer.

12] In my considered opinion also, as the Second Appeal is already dismissed, there is no question of extending any order of stay or even directing the parties to maintain status-quo. The said prayer is therefore rejected.

13] In view of the dismissal of the Second Appeal, nothing survives in the Civil Application and therefore, it also stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]