

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No.319/2017

Smt. Nalubai w/o Waman Talekar and another V/s Shri Shamrao s/o Sukhdeo Patil

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.R. Vyas, Counsel for the applicants/appellants.
Shri A.A.Choube, Counsel for the respondent.

CORAM : A.S.CHANDURKAR, J.
DATE : 18/06/2018.

The appellants are the original defendants in the suit for possession filed by the respondent herein. It is the case of the respondent /plaintiff that he is the owner of the land ad-measuring 1000 Sq.Ft. On 21-6-1990, an agreement was entered with the appellant no.1/defendant no.1 for selling the suit plot for a consideration of Rs. 11,000/-. Rs. 2,000/- was accepted as earnest amount. The defendant No.1 had filed Regular Civil Suit No.103/1993 for specific performance of that agreement. The suit came to be dismissed and the appellate Court confirmed that judgment. As the defendant no.1 had been put in possession on the basis of agreement dated 21-6-1990, the plaintiff sought possession pleading that the defendant had no right to continue in possession.

In the written statement, it was pleaded that the defendants were in possession for more than fifteen years and therefore had perfected their title through adverse possession. A counter claim was

also filed seeking declaration that the judgment in Regular Civil Suit No. 103/1993 was not binding on the defendant No.2.

The trial Court decreed the suit and dismissed the counter claim. The appellate Court confirmed that decree.

The learned Counsel for the appellant submitted that since the appellants were in possession for a period of more than fifteen years in a hostile manner, that right was perfected and the defendants become owners by way of adverse possession. The decree passed in the earlier suit was not binding on the defendant No.2 and therefore the defendants could not be dispossessed by passing a decree in the present proceedings. Moreover, the defendants were always ready to pay the balance amount of Rs. 2000/- but this was not accepted by both the Courts.

The learned Counsel for the respondents supported the impugned judgment. He submitted that the decree passed by the Trial Court attained finality and the judgment in Regular Civil Suit No. 103/1993 was binding on the parties. The defendant No.2 was examined as witness in that suit and hence the counter claim was rightly rejected.

I have heard the learned Counsel for the parties at length and I have perused the impugned judgment. It is not in dispute that Regular Civil Suit No. 103/1993 was filed by the appellant No.1 seeking specific performance of the agreement dated 21-6-1990. That suit was dismissed holding that the plaintiff was not ready and willing to perform her part of the contract. This decree has attained finality. The present suit is filed on the basis of title. It has been found that the appellants

/defendants were in possession pursuant to the agreement dated 21-6-1990. Once it is held that said agreement cannot be enforced, there is no legal basis for the appellants to continue in possession. The respondent on the basis of his title was entitled to receive possession of the suit property.

The adjudication by both the Courts is after considering the entire evidence on record. The findings recorded cannot be said to be perverse. No substantial question of law arises for consideration.

The Second Appeal is, therefore, dismissed with no order as to costs.

JUDGE