

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

16 SECOND APPEAL NO. 461 OF 2018
WITH
CA/7834/2018
IN
SA/461/2018

JAIKUMAR BANKATLAL BAKLIWAL AND
ANOTHER
VERSUS
BHOJA RANGOBA TIDKE AND OTHERS

.....
Mr. V.I.Thole a/w Mr. N.S.Jaju,
Advocate for Appellants.

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CORAM : V.L.ACHLIYA, J.

DATE : 13/08/2019

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ORAL ORDER :

1. Being aggrieved by the concurrent decisions rendered by the Courts below dismissing the Suit of the plaintiffs/appellants, the appellants have preferred this appeal.
2. Heard learned counsel for appellants. Perused the Judgments and orders passed by the trial Court and the appellate Court.
3. The appellants/original plaintiffs filed civil Suit bearing R.C.S. No. 191/2007 to declare them as owners of suit property bearing S.No. 21 admeasuring

17 Acres 34 gunthas situated at village Bondhar Via Haveli, Taluka and District Nanded corresponding to G.Nos. 39,40 and 41 and further claimed decree of possession in respect of said property with consequential relief of injunction to restrain defendants from creating third party interest.

4. The plaintiffs have approached with the case that deceased Bankatlal, the father of plaintiff No. 1 and grandfather of plaintiff No. 2 inherited properties from his father late Motilal Bakliwal. The deceased father of plaintiffs was cultivating suit property by employing labours has given land for cultivation to Bhoju and Namanabai on batai basis. Up to 2005, the defendants used to pay batai amount. After the death of father of plaintiff No. 2, they avoided to pay batai amount. Neither they paid batai amount nor cultivated the land. Therefore, suit came to be filed. It is further submitted that though defendants have claimed that the suit property was purchased by their deceased father by sale deed, no such sale deed was produced to support the case of defendants.

5. Respondent No. 1 appeared and resisted the suit claim. They have denied the case of plaintiffs. They claimed that their father Rangoba purchased the suit property from Bankatlal i.e. father of plaintiff No. 1 by registered sale deed. After the sale deed, mutation entry was duly recorded in revenue record. They

claimed to be owner and in possession of suit property for more than 50 years as owner thereof.

6. On due consideration of pleadings and evidence adduced in the case, trial Court dismissed the Suit by holding that plaintiffs have failed to prove that they are owner of suit property. So also the suit found to be filed much beyond the period of limitation. Being aggrieved the appellants/plaintiffs preferred appeal before the District Court, Nanded by Judgment and decree dated 06/09/2017 passed in R.C.A. No. 150/2008, the learned District Judge-3, Nanded dismissed the appeal and confirmed the Judgment and decree passed by the trial Court. Being aggrieved the appellants have preferred this appeal.

7. Learned counsel for appellants contended that the Courts below erred in holding that plaintiffs failed to prove their title to the suit property. It is submitted that in the Written Statement filed, the defendants have admitted that the suit land was owned by deceased Bankatlal, the father of plaintiff No. 1. They have claimed that the suit land was purchased by their deceased father from Bankatlal. In this back-ground, it is contended that the predecessor in title of plaintiffs was the owner of suit property being admitted by defendants, the Courts below erred in recording the findings that the plaintiffs failed to prove their title to the suit property.

8. I have carefully considered the rival pleadings and evidence adduced in the case. In my view, the reasons and findings recorded by the Courts below are quite consistent with the rival pleadings and evidence adduced in the case. There is absolutely no perversity in the Judgment and decree passed by the Courts below. Although the plaintiffs are claiming to be the owner of suit property and claimed to declare them as owner of the suit property, they have failed to produce evidence to prove their case. Except documents in the nature of Khasra patrak/Pahani patrak, no other evidence produced in the case on the part of plaintiffs to prove their ownership to suit property.

9. The trial Court has observed that as the plaintiffs have approached with the case that they are the owners of the suit property and defendants have denied their claim of ownership, the burden solely rest upon plaintiffs to prove their case. However, they have failed to produce evidence to prove their ownership and title over the suit property. The trial Court has further observed that the defendants are in possession of suit property for more than 50 years prior to filing of Suit. The trial Court has also found that Suit barred by limitation. So also, plaintiffs have failed to prove that they are the legal heirs of deceased Bankatlal.

10. The appellate Court has closely scrutinized evidence and found no merit in the case of appellants. Thus, on due consideration of the Judgments and decree passed by the Courts below, in my view, there is no perversity in any of the reasons and findings recorded by the Courts below. The appeal raises no substantial questions of law so as to entertain appeal. I am, therefore, not entitled to entertain the appeal.

11. Accordingly, the appeal is dismissed. In view of dismissal of appeal, C.A.No. 7834 of 2018 seeking stay to the execution of decree deserves to be dismissed. Accordingly, the application is dismissed.

[V.L.ACHLIYA]
JUDGE

KNP.