

JPP

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

***SECOND APPEAL (St.) NO. 7710 OF 2017
with
CIVIL APPLICATION NO. 586 OF 2019***

Geetabai Tatyaba Mandekar

... Appellant/Applicant

V/s.

Tukaram Ananda Padwal and Ors.

... Respondents

Mr. T. D. Deshmukh a/w. Sagar Kursija for the Appellant/Applicant.
None for the Respondents.

CORAM : N.M. Jamdar, J.

DATE : 26 July, 2019.

P.C. :-

By order passed today delay in filing the Second Appeal was condoned and the Appeal is taken up for consideration. I have heard learned Counsel for the Appellant.

2. The Second Appeal challenges the concurrent judgments and orders passed by the learned Civil Judge, Junior Division and the learned District Judge, Khed, Rajgurunagar, Pune dismissing the Suit and Appeal filed by the Appellant. The Appellant had filed a

Suit for a declaration that the Appellant had perfected to its title for the suit property by way of adverse possession.

3. The property in question is Gat No. 220 admeasuring 1 Hectare 37 Are. It is situated at village Aambethan. It is the case of the Appellant – Plaintiff that the suit property was initially standing in the name of one Ananda. Though the property was in the name of Ananda, husband of the Plaintiff was cultivating the suit land till his death and thereafter, the Appellant – Plaintiff was cultivating the suit land. It is submitted that the cultivation continued without any hindrance. Ananda had filed a suit for injunction but it is dismissed in default and in this suit it was admitted that the Plaintiff was in possession. The Respondent – Defendant controverted these assertions and contented that after the demise of Ananda they became entitled to the property as heirs and they have been cultivating in the suit land.

4. These rival pleadings show that the dispute centered essentially around factual possession whether the Appellant was cultivating the suit land in hostile possession for requisite number of years so as to claim that he has acquired right by way of adverse possession. The learned Civil Judge rightly observed the legal position that ingredients such as open hostile possession to the knowledge of the owner are necessary to establish adverse possession. After assessment of evidence, the learned Civil Judge

held that the Plaintiff had not given specific dates as to when the possession became hostile and what was the nature of the possession. The learned District Judge again re-appreciated evidence and held that the factual foundation of the assertion was not established. Even assuming that the Appellant was in possession for requisite number of years that alone is not sufficient to establish the claim of adverse possession. The possession should be hostile to the knowledge of the owner. Such evidence is completely missing.

5. Therefore there is no perversity in the view taken by both the Courts. No substantial question of law arises. The Second Appeal is accordingly dismissed.

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

(N.M. Jamdar, J.)