

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 66 OF 2019

ALONGWITH

CIVIL APPLICATION NO. 94 OF 2019

Gajubhai Mangalbhai Patel
and Ors.

.....Appellants

V/s.

Magjibhai Hariyabhai and Ors.

....Respondents

* * * *

Mr. Girish R. Agrawal, Advocate for the appellant

Mr. Mandar Soman, Advocate for respondents no.1 to 3.

CORAM : SANDEEP K. SHINDE, J.

Tuesday, 5th March, 2019.

P.C. :

1. Heard learned Counsel for the parties.
2. The appellants-plaintiffs had filed a suit for declaration of their title by adverse possession against the co-owners. The suit was dismissed and the decree of the

trial Court was confirmed in Regular Civil Appeal No.1 of 2017. It is against the decree passed by the Principal District Judge, Dadra and Nagar Haveli, Silvassa, this Appeal is preferred.

3. I will refer the parties by their status in the suit.

4. It is the case of the plaintiffs that, in the year 1975, the Land Reforms Officer, Dadra & Nagar Haveli had passed an order and granted occupancy rights to the members of the family of Haribhai-common ancestor. It is plaintiff's case that, their occupancy rights then granted, stood merged into the occupancy rights of Magjibhai (brother of plaintiff's father) to the extent of 54 ares. It is their case that, since then, the plaintiffs through their predecessor-in-title are in possession of the land admeasuring 54 Ares out of Survey No.45/1. The plaintiffs father, Mangal died in the year 2010 and the suit was filed by his legal representatives in August, 2012 for declaration of title by adverse possession. It appears, Magjibhai was likely to alienate the entire land Survey No. 45/1 and defeat the occupancy rights of the plaintiffs. This was the cause of

action which culminated into Suit, being Regular Civil Suit No. 2 of 2013.

5. It is not in dispute that, the order passed by the Land Reforms Officer in the year 1975 does not reflect/shows occupancy rights of plaintiffs in land Survey No.45/1. Infact, 1975 order passed by Land Reform Officer excludes Mangal (predecessor-in-title of the plaintiffs). Mangal, during his lifetime did not challenge the order of the Land Reforms Officer. It appears, in the year June, 2002 the plaintiffs had filed an application to the Mamlatdaar (Silvassa) for recording the name of Mangal Hariya for acknowledging his occupancy right to the extent of 54 Ares in the land Survey No.45/1, however, this application was not taken to its logical end.

6. I have perused the plaint wherein it is prayed that it be declared, "that the plaintiffs are in possession of the suit land since forty years by way of adverse possession and by adverse possession they have perfected that title".

7. Both the Courts below have rendered a finding a fact that, the plaintiffs could not prove their possession in

the suit land i.e. 54 Ares out of Survey No.45/1 and declined the decree of title by adverse possession. More so, it cannot be overlooked that the plea of adverse possession was raised by the plaintiffs against the co-owners. The finding recorded by the Courts below is not perverse but consistent with the evidence on record and thus I do not see any reason to interfere with the evidence of the Courts below.

8. The Appeal, therefore, does not give rise to any substantial question of law. However, the appellants-plaintiffs are entitled to assert their claim and establish their right in the suit land by appropriate proceedings. With this observation, the Appeal is dismissed with no orders as to costs.

9. With dismissal of Appeal, Civil Application No. 94 of 2019 filed for injunction does not survive. The same is accordingly disposed of.

(SANDEEP K. SHINDE, J)