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

SECOND APPEAL NO. 486 OF 2015

Bapu Krishan Dalvi (since deceased)

through Lrs

1a) Tejpal Baburao Dalvi & ors.

..Appellants

vs.

Sampat @ Dilip Yashwant Kamble

..Respondent

....

Shri Vijay Killedar for appellants.

Shri P.M. Arjunwadkar for respondent.

....

CORAM : M.S.KARNIK, J.

DATE : 9th OCTOBER, 2019

P.C. :

Heard learned counsel for the appellants and learned counsel for the respondent.

2. The appellant is the original plaintiff. The plaintiff filed a suit simplicitor for injunction. The plaintiff proceeds on the footing that he is in exclusive possession of the suit property and that the defendant is trying to disturb his possession. It would be material to mention that there was previous litigation against the present plaintiff and defendant filed by the original

owner of the suit property Yadu Mahar. In the suit filed by Yadu Mahar for removal of encroachment allegedly by the plaintiff and the defendant, the plaintiff as well as defendant claimed that they have become owners by adverse possession. Though Yadu Mahar succeeded before the trial Court in Regular Civil Suit No. 304 of 1969, in Appeal filed by the present plaintiff and the defendant being Civil Appeal No. 233/1974, the judgment and decree of the trial Court was reversed. The Appellate Court held that the plaintiff as well as the defendant have become owners by adverse possession and the property bearing survey No. 213/7 is in the joint possession of the plaintiff as well as the defendant.

3. The plaintiff by filing the present suit now contends that he is in exclusive possession of the suit property bearing survey No. 213/7. According to him, the survey number has undergone change and defendant is in possession of survey No.213/8. Learned counsel for the appellant would invite my attention to the evidence of the predecessor in title of the

defendant Shri Dilip Kamble to submit that the said witness admitted that the defendant is in possession of survey No. 213/8. Learned counsel for the appellant moreover would rely upon the map prepared by the TILR to indicate that even this map would demonstrate that the plaintiff is in exclusive possession of survey No. 213/7 and that it is the defendant is in possession of survey No. 213/8.

4. Learned counsel for the respondent on the other hand would support the order passed by the Courts below. He submitted that having regards to the concurrent findings of fact recorded by the Courts below there is no error or perversity in the said findings which is based on the evidence on record.

5. Heard learned counsel.

6. It is not in dispute that the original owner Yadu Mahar had filed Regular Civil Suit No. 304 of 1969 against the plaintiff and the defendant for removal of encroachment and possession of the suit property. The said suit was decreed in

favour of Yadu Mahar. However, in the Regular Civil Appeal No. 233 of 1974 the Appellate Court reversed the decree and held that the suit deserves to be dismissed as the plaintiff as well as the defendant have become owners by adverse possession. It is further held that the plaintiff as well as the defendant are in joint possession of 4 R of land being Survey No. 213/7. Now by filing present suit the plaintiff contends that he is in exclusive possession of survey No.213/7.

7. Relying on the map prepared by the TILR an attempt is made by learned counsel for the appellant to show that the house property of the defendant is in survey No. 213/8. The Courts below have held that part of the house property of plaintiff and as per the decree passed in Regular Civil Appeal No. 233/1974 which was confirmed right upto this Court, is in survey No. 213/7. It is further held that this area of 4 R in survey No. 213/7 is in joint possession of the plaintiff and the defendant. Considering that the findings of the Appellate Court in Regular Civil Appeal No. 233 of 1974 has attained finality

right upto this Court, now it is not open for the plaintiff to urge that he is in exclusive possession of the survey No.213/7.

8. The submission of learned counsel for the appellant-plaintiff that the house property of the defendant is in survey No.213/8 runs counter to the findings recorded by the Appellate Court in Regular Civil Appeal No. 233 of 1974. If in this view of the matter both the Courts below have come to the conclusion that the plaintiff has failed to prove exclusive possession over the suit property and therefore not entitled to injunction, I do not find any reason to interfere with the concurrent findings of the fact recorded by the Courts below on the basis of the evidence on record which are neither perverse nor erroneous. The present appeal does not involve any substantial question of law. The same is dismissed.

(M.S.KARNIK, J.)

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