

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 645 OF 2018

Namdeo s/o Narayan Walke
VS.
Shailendra s/o Manohar Pulliwar and others

Office Notes, Office Memorandum of Coram,
orders
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's

Shri. S. O. Ahmad, counsel for appellant.

CORAM : MANISH PITALE J

DATED : 16.10.2019

The appellant herein has challenged concurrent judgment and orders passed by the two Courts below whereby suit for declaration and permanent injunction filed by the appellant was dismissed.

2. The appellant claimed that he had been in continuous possession along with his wife in the suit property since the year 1985-86 and that therefore, he had become owner of the suit property and that the respondents had no right to disturb peaceful possession of the appellant. The nature of pleadings in the present case shows that the appellant claimed that the name of his wife was entered in 7/12 extract in respect of the suit property on the basis of alleged oral sale deed.

3. The claim made by the appellant was resisted by the respondents and the oral and documentary evidence that came on record demonstrated that an entry had been made in the 7/12 extract pertaining to the suit property showing wife of the appellant as owner on the basis of an alleged oral sale deed. There was a round of litigation between the parties before the Revenue Authorities in respect of said revenue entries.

4. On the basis of the oral and documentary evidence on record, the Trial Court came to the conclusion that the material on record demonstrated that the appellant and his wife had proceeded on the basis that they were owners of the suit property. Although they had claimed at one place that the suit property was fallow land, the evidence on record shows that, the said land was being actually cultivated by the appellant. The Trial Court found that the evidence and material on record was not such that it demonstrated the necessary attributes of adverse possession on the part of the appellant, which included the requirement to show that the appellant was in uninterrupted continuous and exclusive possession hostile to the true owners of the suit property. It was found from the material on record that such claim of adverse possession raised on behalf of the appellant was not made out. On this basis the appeal was dismissed by the Trial Court.

5. Aggrieved by the same, the appellant filed appeal, which also stood dismissed on findings rendered by the Appellate Court on an independent assessment of the evidence and material on record.

6. The learned counsel appearing for the appellant submitted that the latest judgment of Hon'ble Supreme Court in the case of **Ravinder Kaur Grewal and others vs. Manjit Kaur and others in Civil Appeal 7764 of 2014 decided on 07.08.2019**, held that even plaintiff could claim title in a property on the basis of adverse possession. There can be no dispute about the said latest position of law, but it appears that Courts below in the present case have actually proceeded to examine the claim of adverse possession made by the appellant as a plaintiff, as if even as per the law that existed at the relevant time, the appellant as a plaintiff was entitled to seek declaration that he was owner of the suit property by way of adverse possession. Therefore, the latest position of law would not necessarily enure to the benefit of the appellant in the present case.

7. Upon a perusal of the judgment and orders passed by the two Courts below and the analysis of the evidence and material on record, it is found that the findings rendered cannot be said to be perverse in any manner and that the appreciation of evidence by the two Courts below appears to be reasonable. The findings rendered by the two Courts below make it

very clear that the essential ingredients of adverse possession could not be proved by the appellant in the present case and therefore, even if it was to be held that the appellant as a plaintiff could claim title in the suit property by way of adverse possession, decree could not have been passed in his favour.

8. This Court agrees with the concurrent findings of the two Courts below and no substantial question of law arises in the present appeal. Accordingly, the appeal is dismissed. No order as to costs.

JUDGE

KOLHE