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

SECOND APPEAL NO. 43 OF 2020

Gangabai wd/o Raju Chavan and another

Vs.

Anil Dattatraya Chavan and others

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

Court's or Judge's orders

Shri Prachi Joshi, Counsel for appellant.

CORAM : AVINASH G. GHAROTE, J.

DATE : 12.02.2020.

1. The present appeal is filed by the original defendant Nos. 1 and 2. For the sake of convenience, parties are referred to as they were before the Trial Court.

2. The plaintiff approached the Trial Court by a suit bearing Regular Civil Suit No. 110/2010 for possession of plot No.514 admeasuring 300 sq. ft. contending that in the year 2009, the defendant Nos.1 and 2 had encroached upon the suit plot and therefore, sought possession of the same. The defendants set up a plea, that they were in possession of the suit property, under an agreement of sale dated 31.03.1995. A document styled as 'consent letter', was also pressed into service in this regard. It was alternatively claimed that the defendant Nos. 1 and 2 had acquired title by way of adverse

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possession, since they were in possession of the suit property from 31.03.1995, till the date of filing of the suit. The learned Trial Court, found that the agreement dated 31.03.1995, which was denied by the plaintiffs, though marked as Exhibit-25 was not proved as required by law, as the witness to the agreement was not examined. Similar situation was held to be in existence regarding the consent letter at Exh. 24. It thus refused to believe the plea put forth by the defendant Nos.1 and 2, that they were put in possession of the suit property, under the agreement dated 31.03.1995. In so far as, plea of adverse possession is concerned, the learned Trial Court held that though the possession of the defendant No. 1 upon the suit property, is not disputed, however, the date of commencement of the possession, the nature of the possession, the assertion of hostile title, was neither pleaded nor proved. It, therefore, rejected the theory as canvassed on behalf of defendant No.1 that title to the suit property had been perfected by adverse possession. It, therefore, decreed the suit for possession considering the entitlement of the plaintiff thereto, in light of the fact that Laxmibai the mother of the plaintiff, had since passed away and the plaintiff being one of her legal heirs was entitled to file the proceedings.

3. Being aggrieved by the same, the appellants filed an appeal bearing Regular Civil Appeal No. 35/2014, which came to be dismissed on 06.11.2019. The learned Appellate Court, duly recorded the plea as raised on behalf of defendant

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No. 1, that she had come in possession under an agreement of sale dated 31.03.1995, alleged to have been executed by Laxmibai the mother of the plaintiff/Anil in favour of Raju Narayan Chavan the husband of the defendant No. 1. It found favour with the finding of the Trial Court that mere marking of a document as an exhibit does not dispense with the proof of the same and in light of that, concurred with the Trial Court that the so called agreement Exh. 25 was not proved. It also recorded the plea advanced on behalf of the appellant/defendant No.1, of the husband of the defendant No.1, being in permissive possession. It, therefore, confirmed the finding that the defendants were in unauthorized occupation of the suit property. So far as, the plea of adverse possession, it recorded that there was abject failure on part of the defendants to plead and prove this claim. It, therefore, dismissed the appeal. Learned counsel for the appellants submits, that the findings by both the Courts below were vitiated, as the Courts below have not taken into consideration that the property was received by Gangabai defendant No.1, in a partition of the year 1998, which failure has resulted in ignoring the rights as derived by the defendant No.1 to the suit property. She, therefore, submits that a substantial question of law arises on failure to consider the legal situation resultant to the partition.

4. The plea of partition, of the year 1998, is a plea, which is being raised for the first time in Second Appeal. The

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perusal of the judgment of the Trial Court demonstrates that this plea was never raised before the Trial Court. On the contrary, the appellant Gangabai admitted Laxmibai the mother of plaintiff, to be the owner of the suit property, due to which a plea was raised in her written statement before the Trial Court, regarding execution of an agreement of sale dated 31.03.1995 in her favour by Laxmibai. That apart, a further alternative plea, of the defendant No. 1 having acquired title by way of adverse possession, was also unsuccessfully raised. That being the position, the defendant No. 1 once having admitted the mother of plaintiff to be the owner of the suit property, it does not lie, now with the appellants to raise a plea, that they were in possession of the suit property in their independent right. There is not even a whisper in the Trial Court regarding such a plea. The Appellate Court in fact in its judgment, in para 14 has noticed that there was no serious dispute about the fact that Dattatray, the father of the plaintiff/Anil, had received the suit plot in a partition effected between himself and his brothers and the plot allotted to the share of the father-in-law of Gangabai/defendant No. 1, was located adjacent to the suit plot. It further noted that it was an admitted position by the defendant No. 1, that the name of Laxmibai was recorded in the record of rights in respect of the suit plot and after her demise the name of the plaintiff Anil has been so recorded.

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5. The plea of being in possession under an agreement of sale vis-a-vis the plea of having become an owner by adverse possession are self destructive to each other. The defendant No. 1, having raised a plea that she was put in possession under the agreement of sale and the consent letter, cannot cannot turnaround and claim that she had acquired title by way of adverse possession as according to her own admission, her possession was under a document. The ingredients necessary for successfully raising a plea of adverse possession and establishing the same, have been stated by the learned Trial Court in para 25 of its judgment and not a single ingredient has been satisfied. In that light of the matter, no question of law much less, any substantial question of law arises for consideration. The Second Appeal therefore, is, without any merits and is accordingly dismissed. In these circumstances, there shall be no order as to costs.

JUDGE