

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

SECOND APPEAL NO.05/2020

Smt. Kausalyabai Nivrutti Gadekar and another
...Versus...
Shri Gajanan Rustam Pawar and others

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

Court's or Judge's orders

Shri K.P. Sadavarte, Counsel for appellants

CORAM : AVINASH G. GHAROTE, J.
DATE : 21/02/2020

1. Heard Shri Sadavarte, learned Counsel for the appellants.
2. One Bakubai was the owner of land bearing Gat No.247 admeasuring 0.45 HR situated at village Kelwad, Tah. Chikhli, Distt. Buldhana. Bakubai passed away on 3/11/1993, as a result of which, the name of her daughter Dwarkabai came to be recorded in her place in the revenue records. The plaintiffs obtained a sale-deed on 9/12/2002, from Dwarkabai. The sale-deed in favour of the appellant no.1 Kausalyabai/defendant no.2 was in respect of 0.14 R and the one in favour of Rameshwar/defendant no.3 was in respect of 0.31 R. On 28/2/2003, the plaintiffs issued a notice claiming that they were the legal heirs of one Narmadabai, who was also

the daughter of Bakubai and therefore, had one half share in the suit property. A suit for partition and separate possession was filed by the plaintiffs on 24/7/2003 against Dwarkabai and the present appellants. In the Trial Court, the fact that Narmadabai was the daughter of Bakubai was an admitted fact. That being the position, the Trial Court, passed a decree in favour of the plaintiffs, holding them to be entitled to half share in the suit property and declaring the sale-deed dated 9/12/2002 in favour of the defendant nos.2 and 3 as not binding upon the plaintiffs to the extent of their half share in the suit property.

3. The First Appellate Court, in view of the undisputed relationship between the plaintiffs and Bakubai, through their mother Narmadabai, confirmed the findings of the Trial Court and dismissed the appeal.

4. Shri Sadavarte, learned Counsel for the appellants submits that the suit as filed by the plaintiffs for partition and separate possession was barred by limitation, inasmuch as since Bakubai passed away on 3/11/1993 and her daughter Narmadabai passed away on 16/9/1994, the cause of action for filing the suit for partition, arose on 16/9/1994, the date of demise of Narmadabai and therefore, the suit as filed on 24/7/2003 was barred by limitation. The argument does not have any merit for the reason that on 28/2/2003, the plaintiffs issued a notice demanding partition, which gave rise to the cause of action for filing the suit for partition and

separate possession.

5. Shri Sadavarte, learned Counsel then submits that the defendant nos.2 and 3 were *bona fide* purchasers, inasmuch as the revenue record, consequent to the demise of Bakubai, contained the name only of Dwarkabai/defendant no.1 and placing reliance upon the same, the sale-deed dated 9/12/2002 came to be executed. It is trite position of law that the theory of *bona fide* purchasers, is inapplicable to the suit for partition. At the most, the Court would be called upon to balance equities by apportioning the share, falling to the share of Dwarkabai to be given to the defendant nos.2 and 3. A perusal of the judgment of the Trial Court clearly demonstrates that this is what has been done by the Trial Court and therefore, the contention does not stand to reason.

6. Shri Sadavarte, the learned Counsel thereafter submits that plea of defendant nos.2 and 3 having become owners by way of adverse possession, was also raised, which was incorrectly negated by the Courts below. He submits that consequent to the sale-deed dated 9/12/2002 the defendant nos.2 and 3 have been exercising rights of ownership over the suit property and therefore, in exercise of that right, since 2002 onwards, their ownership by adverse possession had ripened in full ownership.

7. The arguments, in my humble opinion, are misconceived for the reason that once the defendant nos.2

and 3 claimed that they had come in possession of the suit property, under the sale-deed dated 9/12/2002, it was not permissible for them to raise the plea of adverse possession, unless it was demonstrated that there was any assertion of hostile title to the knowledge of the plaintiffs. No such pleading or evidence is there on record, that apart the sale-deed of the defendant nos.2 and 3 is dated 9/12/2002 and the suit has been filed on 24/7/2003, i.e., less than a year consequent to the sale-deed, under which the defendant nos.2 and 3 claimed to have been put in possession of the suit property, in light of which the plea has been rightly rejected by the Courts below.

8. There is, therefore, no substantial question involved in the present second appeal. The same is, therefore, without any merits and is accordingly dismissed. In the circumstances, there shall be no order as to costs.

JUDGE