

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.467 OF 2013

VASANTLAL S/O RANGLAL REDASANI (DIED) THR. HIS LRS SMT.
KAUSALYABAI VASANTLAL REDASANI AND ORS
VERSUS
ANAND JAIN MEDICAL TRUST AND ORS

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Mr. S. B. Yawalkar, Advocate for the appellants.
Mr. B. R. Waramaa, Advocate for respondent No.8.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 27.08.2021

ORDER :-

. Present appeal has been filed by the original defendants to challenge the concurrent judgment and decree passed by both the Courts below. Present respondents – original plaintiffs filed Special Civil Suit No.319 of 1990 before the learned Joint Civil Judge Senior Division, Jalgaon for recovery of possession of the first floor of the suit house. The said suit came to be decreed on 03.08.2001. Original defendants challenged the said judgment and decree by filing Regular Civil Appeal No.312 of 2001 before the learned Adhoc District Judge-2, Jalgaon. The said appeal came to be dismissed on 10.09.2012. Hence, this second appeal.

2. Heard learned Advocate Mr. S. B. Yawalkar for appellants and learned Advocate Mr. B. R. Waramaa for respondent No.8. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

3. Original Plaintiffs i.e. Trust and the Trustees had come with the case that the Trust is the owner of the suit property. One Babulal was the owner and possessor, who expired on 24.01.1972. Thereafter, his widow – Shantabai and daughter – Sushilabai became owners and possessors. Daughter – Sushilabai also died on 22.10.1986, who was then survived by five sons and a daughter. The widow i.e. Shantabai had adopted Abhaykumar in the year 1987 i.e. after the death of daughter – Sushilabai. Then widow – Shantabai, her adoptive son – Abhaykumar, grandsons and daughter (children of daughter-Sushilabai) executed gift deed in favour of plaintiffs on 13.10.1987, thereby gifting two houses. Defendant Nos.1 and 2 were possessing the first floor of house No.3395 and entire house No.3390. Therefore, a symbolic possession was given to the plaintiffs. According to the plaintiffs, defendants were in permissible possession of the suit property as the original owners had inducted them with permission. The Trust then issued notice to the defendants to hand over the possession, but when defendants refused, the suit was filed.

4. The defendants contended that the suit was not maintainable without sanction from the Charity Commissioner as required under Section 50 of the Maharashtra Public Trusts Act. They have also taken the plea of non joinder of necessary party i.e. the Charity Commissioner, as required under Section 51 of the Maharashtra Public Trusts Act. They challenged the fact that any such gift deed was executed by the original owners in favour of plaintiffs. They contended that their possession is not permissive in nature. They then contended that defendants are in possession of the suit property as being family members of one Motilal Redasani. In the alternative, they claimed ownership by adverse possession.

5. Both the Courts below have held that the suit was maintainable and there was no bar of Section 50 of the Maharashtra Public Trusts Act. The suit was also not bad for non joinder of necessary party. Plaintiffs had proved that the title to the suit property is vested in them by virtue of gift deed executed on 13.10.1987. The possession of defendant Nos.1 and 2 in the suit property is permissive in nature. Defendants have failed to prove that they have acquired title by adverse possession and, therefore, the suit came to be decreed. The defendants were directed to hand over the possession of the suit property to the plaintiffs and the appeal filed by the defendants came to be rejected.

6. Now, it has been vehemently submitted on behalf of the appellants that the law points as well as facts have not been considered properly. Permission as contemplated under Section 50 of the Maharashtra Public Trusts Act was necessary and since the Charity Commissioner is not made a party to the proceeding, the suit was also bad for non joinder of necessary party.

7. Per contra, the learned Advocate appearing for the respondent No.8 supported the reasons given by learned Courts below on the said point.

8. At the outset, it is to be noted that in order to get possession from a third party i.e. who is not a part of the Trust, then such permission is not necessary. Both the Courts below have relied on the decision of this Court in *Amirchand Tulsiram Gupta Vs. Vasant Dhanji Patil*, [1992 *Mh.L.J.* 275], wherein it has been held that provisions of Section 50 and 51 of the Maharashtra Public Trusts Act do not put embargo for filing suit by the trustees to recover the possession from a third person and consent of Charity Commissioner or the Charity Commissioner being necessary party to the suit is not a condition precedent. No different or contrary position of law has been pointed out.

9. As regards the facts of the case are concerned, the oral evidence has been led by the plaintiffs to prove that the gift deed has been executed in favour of the Trust. Though the defendants challenged it, it appears that there is nothing in the cross, which could discard that evidence. There is no dispute or contrary evidence led by the defendants to show that the said two houses were received by Babulal Motilal in partition in the year 1956. They have not demonstrated as to how they could claim the right in the property on the basis of alleged relationship with Motilal. Further, it is to be noted that according to the defendants still the suit property is owned by Motilal i.e. who was the father of Babulal and defendants would be then co-owners. However, plaintiffs produced partition deed at Exhibit-139, which was a document of more than 30 years old and came to be exhibited in view of Provisions under Section 90 of the Indian Evidence Act. After the said registered document, the Mutation Entry has been changed and the said extract was never challenged by the defendants at any earlier point of time. That means, since 1956, that position continued till the filing of the suit in the year 1990. The defendants never challenged the gift deed. Under such circumstance, on the preponderance of probabilities both the Courts below have rightly held that the Plaintiff – Trust is the owner of the suit property and the possession of the defendants would be

permissive in nature. After the notice was given by the plaintiffs to defendants, defendants are bound to vacate the premises.

10. No substantial questions of law as contemplated under Section 100 of the Code of Civil Procedure are arising in this case requiring admission of the second appeal and, therefore, in view of *Kirpa Ram (deceased) through Lrs. and others Vs. Surendra Deo Gaur and others, [2021 (3) Mh.L.J. 250]*, the second appeal stands dismissed.

[SMT. VIBHA KANKANWADI, J.]

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