

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****SECOND APPEAL NO. 372 OF 2021****WITH****INTERIM APPLICATION NO. 3271 OF 2021**

Shankar Laxman Kokare and Ors.

... Appellants

(Orig. Defendants)

V/s.

Chandrakant Anant Sawant

... Respondent

(Orig. Plaintiff)

Mr. Kapil P. Shetye, Advocate for Appellants/Applicants.

Mr. Satyajit A. Rajeshirke, Advocate for Respondent.

CORAM : A.S. GADKARI, J.

DATE : 15th November, 2021.

PC. :

1. By the present Appeal under Section 100 of the Code of Civil Procedure (*for short*, 'C.P.C.'), the Appellants/original Defendants have impugned Judgment and Order dated 25th March, 2021 passed in Regular Civil Appeal No.60 of 2019, by the learned Principal District Judge, Ratnagiri, thereby partly allowing the said Appeal preferred by the Appellants to the extent of setting aside the Decree of mesne profit only and maintaining remaining part of the Judgment and Order dated 4th July, 2019 passed by the learned 5th Joint Civil Judge, Junior Division, Ratnagiri in R.C.S. No.286 of 2016, thereby directing the Appellants to deliver possession of the suit land to the Respondent within stipulated period, failing which the Respondent may get it by way of execution of Decree.

2. Heard Mr. Shetye, learned Advocate for the Appellants and Mr. Rajeshirke, learned Advocate for the Respondent. Perused record.

3. The Record reveals that, the Respondent had instituted R.C.S. No.286 of 2016 for recovery of possession of encroached portion of suit land and mesne profit from the Appellants. The suit property is 27 ares of land out of Gut No.833, which is more specifically demarcated with letters ABCD in the map annexed to the plaint. The suit property is situated at village Nanij, Taluka & District Ratnagiri. The Respondent is owner of all the piece and parcel of land bearing Gut No.833. He has planted mango and cashew trees in the year 1978 in various phases and had also constructed a stone compound wall around the suit property. The adjoining land bearing Gut No.832 is belonging to the Appellants. It is the case of the Respondent that, from the year 2007, the Appellants started obstruction to the suit land admeasuring 27 ares, which is owned by the Respondent. They in fact destroyed the stone compound wall and constructed the wire fencing in Gut No.833. It is the case of the Respondent that, the Appellants have encroached upon the suit land, despite their being findings recorded by the Court of Competent Jurisdiction.

The Appellants raised a plea that, they become owner of the suit land by way of adverse possession, as since the year 1994 they were in actual use and occupation of the suit land. They also planted mango trees and

cashew trees by availing Government Scheme, to which the Respondent never objected and it is the reason for them to raise the said plea. The Trial Court framed issues below Exh.14. Parties herein led evidence in the said suit. Certified copy of the Judgment in R.C.S. No.152 of 2007 is produced at Exh.39 by the Respondent. On the basis of the evidence led by the parties herein, the Trial Court recorded finding that, the Respondent has proved that he is entitled to recover possession of the encroached portion of land. The Trial Court has further held that, the Appellants have failed to prove that, they have perfected their title of the alleged encroached portion of the suit land by way of adverse possession. The Trial Court was pleased to Decree the said suit and directed the Appellants to deliver possession of the suit land to the Respondent within three months from the date of passing of the said Order, failing which the Respondent may get it by way of execution of Decree. The Trial Court also directed to conduct enquiry for mesne profit from the year 2007 till delivery of the actual possession of the suit land as contemplated under Order 20 Rule 12(1)(c) of C.P.C..

4. As noted earlier, the Appellate Court partly allowed the Appeal preferred by the Appellants and setting aside the Decree passed by the Trial Court to the extent of the mesne profit only, however has maintained the rest of the part of the Judgment and Decree passed by the Trial Court.

5. Mr. Shetye, learned counsel for the Appellants submitted that, both the Courts below have failed to appreciate the fact that the Appellants were admittedly in possession of the suit land since the year 1994 and had planted mango and cashew trees in the suit land with the help of Government Scheme. He submitted that, the Respondent had also admitted the said fact before the 'Tanta Mukti Samiti' and therefore the Appellants are entitled for a declaration of ownership over the suit land by way of adverse possession. He submitted that, both the Courts below have failed to appreciate evidence on record in its proper perspective and that is also the reason for this Court to interfere with the Judgments and Orders passed by both the Courts below in its jurisdiction under Section 100 of C.P.C.. He therefore prayed that, the present Appeal may be allowed.

6. Perusal of record clearly indicates that, the Appellants have failed to prove their case that, they become owners of the suit land by way of adverse possession. Except a passing reference in the evidence of Respondent, no other evidence is led by the Appellants to substantiate their claims of adverse possession over the suit property. Admittedly, the Appellants are owners of Gut No.832, which is adjacent to Gut No.833 owned by the Respondent. It is the precise case of the Respondent that, the Appellants encroached upon his land by destructing stone wall compound erected by him.

7. The record further reveals that, the Appellant No.1 had filed R.C.S. No.152 of 2007 against the Respondent before the learned Civil Judge, Junior Division, Ratnagiri for a relief of perpetual injunction, claiming that the Appellants are owner and possessor of the suit land. The learned Civil Judge, Junior Division, Ratnagiri was pleased to Decree the said suit and restrained the Respondent from causing obstruction to the possession of the Appellants over the disputed portion of his land of Gut No.832 till its recovery of possession by lawful means. The Appeal preferred by the Respondent against the said Decree was dismissed by the Appellate Court. It is an admitted fact on record that, in the said case both the Courts had observed and admitted that, the Respondent is owner of the suit land.

8. The record further reveals that, the Respondent has successfully proved his case beyond reasonable doubt that, he is owner of the said 27 ares of land, i.e. the disputed land in question in the present case.

9. In view of the above, I find that there is no substantial question of law involved in the present Appeal.

10. Appeal being *dehors* of merits is accordingly dismissed.

11. In view of dismissal of Appeal itself, Interim Application No.3271 of 2021 does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]