

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

SECOND APPEAL NO. 72/2021

Nilkanth s/o Narayan Ramteke,
aged about-66 years, Occu-service,
r/o Tilak Nagar, Ballarpur,
Tahsil Ballarpur, District-Chandrapur**APPELLANT**

...V E R S U S...

- 1) Deepak s/o Ashok Nale,
(since deceased through his legal heir)

Smt. Malini wd/o Deepak Nale
aged about-33 years, Occu-labour,
r/o Old Bus Stand, Near Kalpana Lodge,
Buddha Nagar, Ballarpur,
Tahsil-Ballarpur, District-Chandrapur.

- 2) Smt. Suman w/o Ashok Nale
aged about-45 years, Occu-household,
r/o Shri Pavlas House, Rajandra Nagar
Buddha Nagar, Ballarpur,
Tahsil-Ballarpur, District-Chandrapur.

- 3) Anil s/o Daulat Kakde
aged about-45 years, Occu-labour,
r/o Near Kakde's House, Killa Ward,
Ballarpur, Tahsil-Ballarpur, District-
Chandrapur.

...RESPONDENTS

Mr. Rohit Joshi, Advocate for appellant.

<u>CORAM</u>	<u>:- S.M. MODAK, J.</u>
<u>DATED</u>	<u>:- 06/10/2021</u>

ORAL JUDGMENT

Heard learned Advocate for the appellant-plaintiff. His suit for declaration of his title and for declaration that the possession of the three defendants be declared as illegal was dismissed by the Trial Court. Apart from those reliefs, there is also prayer thereby restraining defendants from interfering with the possession of plaintiff over the suit land. The father of the plaintiff by name Narayan Ramteke got allotment of the suit land from the Government under the scheme "Allotment of Land to landless persons belonging to Scheduled Caste Community." The plaintiff is the son of said Narayan. He claimed ownership being the heir of allottee Shri Narayan. Whereas defendant nos.1 and 2 claimed to have purchased the land from one Govind Tidke. The said Tidke claims to have purchased the land from Shri Narayan- father of the plaintiff. The defendant no.3 claims to have purchased the land from defendant nos.1 and 2. He is the last person who is in possession. All the defendants though have admitted title of Narayan (as he is a person who has sold the land) they have pleaded that the suit is barred by law of limitation.

2. The Trial Court framed the issue about ownership of Narayan and also ownership of plaintiff being the son of Narayan. The Trial Court also framed the issue about sale of the suit land by

deceased Narayan to said Govinda Tidke. The issue of limitation was also framed.

3. The plaintiff examined himself and one Shankar Nimsarkar (knowledge about title of the plaintiff and his father).

He relied upon the following documents—

- a) Kistabandi Khasara at. Exhs. 29, 30 & 31.
- b) Order of SDO, Ballarpur at Exh.57.
- c) Notices at Exh.35 dated 13/11/2003 and Exh.40 dated 31/12/2003.

4. Whereas, defendant No.3 (person in possession) examined himself and two more witnesses namely Shamrao Satpute (witness to sale-deed at Exh.71) and one Kunjilal Bhagat (about purchase of land by defendant No.3). He relied upon following documents—

- a) Registered sale-deed at Exh.70A (in between Narayan & Govinda).
- b) Registered sale-deed at Exh.71 (in between **Govinda & Parlas, Ashok**).
- c) Registered sale-deed at Exh.72 (in between legal heirs of **Parlas, Ahok & defendant No.3 Anil**).

Findings by the Trial Court

5. The trial Court framed following issues—

<u>Sr.</u> <u>No.</u>	<u>Issues</u>	<u>Findings</u>
1.	Proof of ownership of deceased Narayan (father of the plaintiff).	Negative
2.	Acquiring ownership by the plaintiff after the death of his father.	Negative
3.	Sale of land by deceased Narayan to Govinda Bhikaji Tidke.	Negative
4.	Right of defendants over the suit property.	Negative
5.	The Court having jurisdiction.	Affirmative
6.	Suit barred by limitation.	Affirmative
7.	Entitlement to declaration about illegal possession of defendant Nos.1 to 3.	Negative
8.	Entitlement to declaration about ownership of the plaintiff.	Negative
9.	Entitlement to permanent injunction.	Negative

6. The plaintiff could not produce any patta issued by the State Government in favour of his father. The 7/12 extracts though mention the name of deceased Narayan, it does not prescribe him as an owner. For these reasons, the plaintiff could not prove his ownership. Though the plaintiff has pleaded about

three sales, after appreciating the oral and documentary evidence, the trial Court concluded that sale of land by Narayan to Govinda is not proved. The trial Court believed on Shamrao Satpute (witness to Exh.71 i.e. sale-deed in favour of Govinda para 15).

7. The trial Court also considered the manner of proof of the sale deed. The trial Court has also considered the evidence of Kunjilal Bhagat (witness to sale-deed with defendant No.3). However, ownership of defendant No.3 over the suit land was not believed as it was a transfer of Class-II ownership without converting the land into Class-I ownership. Hence, the sale-deed was not considered as a valid (para 18). The issue of limitation was answered against the plaintiff for the following reasons—

- a) The plaintiff and his family members not in possession of the suit land since 1972 (admission given).
- b) Though the plaintiff has verified the record in the year 1984 and got knowledge that land is not in his name, still the suit was filed in the year 2003.

8. The trial Court has referred to Article 113 of the Limitation Act (Residuary Article). The period of limitation is three years from the date when right of sue accrues. The trial Court

interpreted “right to sue” means the date when knowledge is obtained from that date the period will start. Articles 58 and 59 of the Limitation Act were held not applicable (para 27). Article 58 talks about limitation when a declaration other than declaration prescribed under Articles 56 and 57 is sought. That is not the case herein. Whereas, Article 59 prescribed the period of limitation when suit is filed to cancel or set aside an instrument. That relief is also not sought.

9. The trial Court even was cautious enough in considering the suit filed also for possession impliedly. It is for the reason that on one hand, plaintiff has asked for declaration that “possession of the defendants be declared as illegal”. On the other hand, the plaintiff has asked for junction against defendants from interfering his possession. In fact, these reliefs are inconsistent with each other. However, the trial Court has read both the prayers in a manner so as to treat the suit as if filed for possession.

10. Even suit for possession was held time barred (as per the Articles 64 and 65 of the Limitation Act) (para 29). The judgment in the case of **Bivas Chandra Samanta Vs. Hira alias Madan Mohan Biswal and Others** reported in **AIR 2006 Orissa 1**

was referred by the trial Court. The observations were held not useful to the plaintiff (para 30). For the above reasonings, the Trial Court dismissed the suit.

First Appeal

11. When the plaintiff filed the first appeal, he could not convince the First Appellate Court. The following points were framed—

- a) Proof of ownership and possession of Narayan.
- b) The defendants having no right over the suit land and their possession is illegal.
- c) Injunction not to interfere the plaintiff's possession.
- d) Limitation.
- e) Interference.

All the points were answered in the negative against the plaintiff. That is why, this second appeal by the plaintiff.

Second Appeal

12. Though in the memo of the appeal, two questions are proposed. One is about correctness of the findings by the Courts below about title of the plaintiff (documentary evidence about the title on one hand and documentary evidence about allotment of

the land by the State Government to father of the plaintiff on the other hand) and second is about correctness of the decision to dismiss the suit for possession based on title on the ground of limitation particularly when defendants have not raised the plea of adverse possession in the written statement.

13. During the arguments, there was stress on second proposed substantial question of law. With the assistance of learned Advocates, I have gone through the findings recorded by both the Courts below on the issues/points framed by the Courts below. I do not find any perversity in it. Those findings are on the basis of proper appreciation of evidence and they are supported by reasoning.

14. The First Appellate Court has relied upon the observations in case of *Dhondiba s/o Nagu Jagtap s. Maruti s/o Lahanu Shinde*, reported in *2019 (6) Mh.L.J.255* . The principle of “possession follows title” laid down under Section 110 of the Indian Evidence Act. When both the parties do not possess any title, those provisions can be relied upon. So the First Appellate Court considered defendant no.3 entitled to retain possession was

relied upon. It is on the basis of this finding. It is contended that unless and until defendant has pleaded about adverse possession, such findings are unwarranted.

15. There cannot be any dispute about the proposition “possession follows title”. Before applying that principle, there has to be sufficient evidence about possession. The Trial Court and the First Appellate Court has discussed about lacunas in the plaintiff’s evidence about possession. The First Appellate Court has found the evidence adduced by defendant more satisfactory that is why above said observations were made. Predominantly, they were based on lacunas in the plaintiff’s evidence. Hence, the ratio laid down in above judgment will not be useful to the plaintiff.

16. I have also read over the judgment in the case of **Bivas Chandra Samanta Vs. Hira alias Madan Mohan Biswal and Others** (*supra*) referred above by both the Courts below. In that proceedings, the suit was for cancellation of sale-deed and permanent injunction. There was no prayer for getting back the possession. The suit was decreed and it was confirmed by the First Appellate Court. The High Court of Orissa refused to interfere. Objection was taken on the basis of provisions of Section 34 of the

Specific Relief Act, 1963. “If further relief is not sought, then relief of declaration cannot be considered as per the proviso to Section 34” was held of no application. Because, relief of permanent injunction (apart from declaration) is sought. However, the High Court of Orissa has considered the suit filed also for relief of possession. On the basis of facts, it was held. The High Court emphasized on the power of the Court to mould the relief depending upon the facts and circumstances of the case.

17. The Trial Court and the First Appellate Court have also considered those observations in paragraphs 27 & 30 in the judgments respectively. The trial Court observed “ratio does not come to the rescue of the plaintiff”. Whereas the First Appellate Court considered the suit as suit filed for recovery of possession. According to learned Advocate Shri Joshi, in fact, both the Courts below have committed an error in applying the ratio to the facts before them. It is true that before the High Court of Orissa, the issue of limitation was not pressed (issue No.2).

18. I am not in agreement with the learned Advocate Shri Joshi. There cannot be any dispute about power of the Court to mould the reliefs depending upon the facts and circumstances of

the case. Though the plaintiff has made inconsistent prayers and though the plaintiff has not asked for recovery of possession, both the Courts below on themselves even have considered the suit filed as if for recovery of possession. This was done perfectly by the Courts below for doing substantial justice in between the parties. However, in that exercise, when the Courts below have found that even the suit for recovery of possession is filed beyond the period of 12 years, I do not find any perversity. Both the Courts below attributed 1984 as the first knowledge to the plaintiff about the names of the defendants appearing on 7/12 extracts. Whereas, the suit was filed in the year 2004. It has rightly been held as barred by law of limitation. The arguments cannot be accepted.

19. Article 64 talks about limitation of 12 years when possession suit is filed by a person who having previous possession (and he is dispossessed). It does not contemplate the suit filed on title. Whereas, Article 65 also contemplates a suit for possession when it is claimed on the basis of title. The period of 12 years is to be computed from the date when possession of defendant has become adverse to the plaintiff. At this point, learned Advocate Shri Joshi submitted that the defendants have not pleaded that

their possession was adverse to that of plaintiff and if it is not so, then there will be difficulty in computing the period of 12 years required from filing of suit.

20. Though this argument looks attractive, it does not hold good in the eyes of law. It is for the reason that it is not the plaintiff who has asked specifically for relief of possession. It is both the Courts below have considered the suit as the suit for possession. This has been done by the Courts below by exercising the power to mould the reliefs depending upon the facts and circumstances (Order VII Rule 7). In fact, the plaintiff himself has asked for inconsistent reliefs in the plaint. That is to say, declaration that defendants' possession is illegal (presupposes defendant is in possession) and permanent injunction not to obstruct his possession (presupposes, he is in possession).

21. The foundation for both these reliefs is different. On this ground, only the case of the plaintiff ought to have been dismissed. Because, he was not sure whether he is in possession or not? So, when the Court has considered the suit as a suit for recovery of possession, the ingredients of Article 65 of the

Limitation Act (starting point is the time when possession of defendant has become adverse to plaintiff). There is no merit in that argument.

22. For the above discussion, I do not find any substantial question of law involved in this appeal. There is no need to frame substantial question of law on the point of limitation as suggested in the memo of appeal. There is no perversity in the findings recorded by the Courts below. Hence, the appeal stands **dismissed**. When no substantial question of law is involved, there is no obligation cast upon the Court firstly to frame it and then to deal with it. It has been held in the case of **Ashok Rangnath Magar vs. Shrikant Govindrao Sangvikar – (2015) 16 SCC 763** (*supra*).

JUDGE

R.S. Sahare