

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

SECOND APPEAL NO. 490 OF 2018

- APPELLANTS:** 1] Tulshiram Zolba Khade,
(Ori. Def.) Aged 58 years, Occu: Cultivator,
(On R.A.) R/o Tambadi, Tah. Korpana,
Dist. Chandrapur (Since dead through
his legal heirs)
- i) Smt. Anusaya Tulshiram Khade,
Aged 60 years, Occu: Agriculturist,
R/o Tambadi, Tah. Korpana,
Dist.Chandrapur.
- ii) Padmakar Tulshriram Khade,
Aged 42 years, Occu: Labour,
R/o Awalpur, Tah. Korpana,
District-Chandrapur.
- iii) Ravindra Tulshiram Khade,
Aged 34 years, Occu: Labour,
R/o Tambadi, Tah. Korpana,
District Chandrapur.
- iv) Sau. Lalita Dilip Borkar,
Aged 47 years, Occu: Housewife,
R/o Manori (Khurd), Tah. Korpana,
District-Chandrapur.

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

- RESPONDENT** : Shankar Ghularam Khade,
(Ori. Pltf.) Aged 63 years, Occu: Business,
R/o Yamuna Kunj-2, Duplex No. 21,
Kapilvastu Nagar, Gorakshan Road,
Akola, Tah. & Dist. Akola.

Shri A.A. Dhawas, counsel for the appellants.

CORAM : ANIL S. KILOR, J.

DATE : 30th NOVEMBER, 2021

ORAL JUDGMENT :

1. This is an appeal arising out of concurrent finding recorded by both the Courts below holding that the appellants/defendant have committed a breach of the contract dated 24.06.2002 and as such, the contract stood cancelled, resultantly the appellant has no right to remain in possession of the suit field, in a suit for recovery of possession.

2. The brief facts which are relevant and necessary for deciding the controversy involved in the present appeal are as follows: (parties are referred to as per their status before the trial Court).

3. The respondent/plaintiff filed a suit for possession against defendants/appellants.

4. It is the case of the plaintiff that an agreement was entered into on 24.06.2002 for sale of suit property i.e. survey No. 26 admeasuring 4 H. 64 R. Mouza Tambadi, and the

possession of the suit property was handed over to the defendant. It was agreed between the parties that the sale-deed shall be executed on or before 25.01.2003 and needed compliances to be completed for execution of a sale-deed, including correction of revenue record, payment of necessary fees for the same etc. would be completed by the defendant, before the agreed date i.e. on 25.01.2003 and get the sale-deed executed. The agreement further says that failure to take necessary steps in respect of correction of the record, payment of fees and other formalities which are to be complied with before execution of sale-deed and before the agreed date, the agreement shall stand cancelled automatically and defendants will have to hand over the possession to the plaintiff and his mother Smt Bulkabai Ghularam Khade.

5. On failure to perform part of the contract by the defendant, suit for possession was filed which was decreed by the learned trial Court on consideration of oral as well as documentary evidence available on record vide judgment and decree dated 21.06.2018.

6. Feeling aggrieved by the said judgment and decree, the defendant has filed an appeal challenging the said judgment and decree before the District Judge-3, Chandrapur in Regular Civil Appeal No. 34/2012 which came to be dismissed, confirming the judgment and decree passed by the

learned trial Court on 19.12.2008. The said judgment and decree is the subject matter of the present appeal.

7. I have heard the learned counsel Shri A.A.Dhawas for the appellant.

8. Shri A.A. Dhawas learned counsel for the appellant submits that both the Courts have committed error in decreeing the suit. Whereas, according to him the suit ought to have been dismissed on the sole ground of non-joinder of necessary parties, as the suit property is owned by not only the plaintiff but also by other owners mainly, the brothers of the plaintiff, who have not been joined as a party. It is submitted that in absence of all the owners as a party to the suit, the decree passed by both the Courts below is bad-in-law.

9. He has further argued that the concurrent findings recorded by both the Courts below that the defendant has breached the conditions of contract, is perverse and without any evidence. It is submitted that no breach is committed by the defendant.

10. He submits that the defendant is in possession of the suit land from the year 1994, i.e. prior to the agreement dated 24.06.2002 and admittedly, the suit for possession was

filed in the year 2006, i.e. after more than a period of twelve years.

11. To consider the contentions raised by the learned counsel for the appellant, I have gone through the record and also perused the judgment and decree passed by both the Courts below.

12. In this matter, the appellant is not disputing the contents of the agreement dated 24.06.2002 and in absence of any dispute as regards the contents of the agreement dated 24.06.2002, there is no doubt that the recitals of the agreement are sufficient to show that it was the responsibility of the appellant to take steps to correct the revenue record and to make the necessary payment of fees and to complete all other formalities which are supposed to be completed before execution of sale-deed on the agreed date i.e. 25.01.2003. From the recitals of agreement, it is clear that on failure to perform his part of the contract by the plaintiff, the agreement says that it will stand automatically cancelled and the appellant would hand over the possession.

13. The defendant has not pointed out anything from the record to show that, he has acted as per the terms and conditions of the agreement and further he has performed his part of the contract as per the agreement dated 24.06.2002.

14. In that view of the matter, I have no hesitation to hold that both the Courts below have rightly held that the defendant has committed breach of the contract and therefore, as per the recitals of the contract, the contracts stood cancelled automatically, immediately after 25.01.2003. Thus, I do not find any merits in the submission of the appellant that there was no breach of contract on the part of the defendant.

15. The next contention of the appellant is that the necessary parties have not been joined to the suit and therefore, the suit was bad for non-joinder of necessary parties. According to him, the plaintiff is not the only owner of the suit field but there are four brothers of the plaintiff who are joint owners of the suit property.

16. The appellant while pointing out the source of his possession, has placed reliance on the contract dated 24.06.2002, which was signed by the plaintiff and his mother Balkabai. The appellant never objected to the plaintiff and his mother Smt Balkabai while taking possession of the suit field from them that there are four other owners who have not given the possession to the defendant. On the contrary, he had happily accepted the possession. However, while contesting the suit, now he has raised a plea that other co-owners have not been joined as the party.

17. The learned Lower Appellate Court while answering this argument has rightly held that as no adverse interest of the mother of the plaintiff has been established. It cannot be said that mother of the plaintiff is a necessary party. The same principle would apply also for the other brothers of the plaintiff, if they have any share in the suit properties as alleged by the defendant. Interestingly, before the trial Court and the learned Lower Appellate Court, it was not the case of the defendant that there are four brothers were also co-owners of the property but the objection was only restricted to the mother of the plaintiff. In the view of the matter, the above referred contention of the appellant is rejected.

18. Moving to the last contention of the appellant that the suit was barred by limitation, as he was in possession from 1994 and the suit was filed in 2006.

19. Firstly, if the appellant is claiming possession through agreement dated 24.06.2002, the said plea is not available to the appellant, as the suit is within twelve years. If it is considered from the year 1994, as per Article 65 of the Scheduled-I given in the Limitation Act, limitation shall start running from the date the possession of the defendant become adverse to the plaintiff.

20. Admittedly, in this matter, no claim is made by the defendant that he has perfected his title by way of adverse possession and therefore, even if the case of the defendant is considered from the year 1994, the suit was well within limitation.

21. In that view of the matter, I do not find any substantial question of law involved in the present second appeal. Accordingly, I pass the following order :-

ORDER

The appeal is dismissed. Pending application (s), if any, stand(s) disposed of. No order as to costs.

[ANIL S. KILOR, J.]

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NANDURKAR

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by RAJESH K
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