

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 23 OF 2014**

Navnitdas Narayandas Barshikar  
(Died, Through L.R.)

Ajit Navnitdas Barshikar  
Age: 62 years, Occu.: Business,  
R/o Market Yard Chouk,  
Near Dr. Ambedkar Statue,  
Station Road, Ahmednagar

..APPELLANT

VERSUS

The Commissioner, Ahmednagar,  
MPL Corporation, Ahmednagar

..RESPONDENT

....

Mr. S.P. Brahme, Advocate i/b Mr. A.S. Bajaj, Advocate for appellant  
Mr. V.D. Hon, Senior Advocate i/b Mr. K.N. Lokhande, Advocate for  
respondent

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CORAM : R.G. AVACHAT, J.  
RESERVED ON : 08<sup>th</sup> SEPTEMBER, 2022  
PRONOUNCED ON : 22<sup>nd</sup> SEPTEMBER, 2022

**JUDGMENT :**

1. This second appeal was admitted for deciding the following  
substantial question of law :-

“Whether the appellant-plaintiff proved *animus possidendi*?”

2. During hearing of this second appeal, the learned counsel for the  
appellant – plaintiff submitted following two additional substantial questions  
of law :-

*“A] Whether the respondent is entitled to claim any right, title and interest over the subject matter in view of the Section 27 of the Limitation Act?”*

*B] Whether the lower appellate Court has rightly exercised the jurisdiction as contemplated by O.41 r/w 96 of Code of Civil Procedure because number of paragraphs recorded by the trial Court in his judgment are reproduced in the judgment of the lower appellate Court which shows non application of independent mind?”*

3. The facts in brief giving rise to this appeal are as follows :-

The appellant – plaintiff filed the suit, Regular Civil Suit No. 216 of 2005, for declaration of his title/ownership to the suit property particularly described in paragraph no.1 of the plaint. The respondent – defendant is the Ahmednagar Municipal Corporation. The appellant – plaintiff claims to have perfected title to the suit property by adverse possession. Both, the trial Court and the first appellate Court, have negated the claim of the appellant – plaintiff. The respondent - Corporation has however been restrained from taking possession of the suit property without following due process of law.

4. It was the case of the appellant – plaintiff that he has been in possession of the suit property for over fifty years. A municipal school was being run in the suit property during initial period. It was being run by a society, “Friends of Depressed League”. A sum of Rs.30,000/- was paid as

donation to the said school. The school was, therefore, named after, “Diwalibai Barshikar”, who was one of the members of the family of the appellant – plaintiff. The school was thereafter shifted to some another premises. The suit property remained in possession of the appellant – plaintiff. He started, “Lokyug Press” in the suit property. He was active in politics. He had been a member and president of Ahmednagar Municipal Council for about forty years. He was also a member of Legislative Assembly from Ahmednagar constituency. The appellant – plaintiff’s name was shown as an owner of the suit property in municipal record. He paid all kinds of taxes thereof in the capacity as owner. The suit property was subjected to repairs and reconstruction many a time. The appellant – plaintiff did the same with prior permission of the respondent-Corporation. The ground floor portion of the suit property has been let out to one Dhanesh Bogawat way back in 1998. He has been running a hotel therein viz. ‘Sukh-Sagar’. License under the Shops and Establishment Act has been issued in the name of wife of the appellant – plaintiff. The Health and Food Department, State of Maharashtra has also recognised the appellant – plaintiff to be the owner of the suit property. The upstairs portion of the suit property is occupied by the appellant for his residence. As such, the appellant – plaintiff has been in possession of the suit property continuously, without interruption and with the knowledge of the respondent – Corporation.

5. The trial Court non-suited the appellant – plaintiff mainly on the ground that the appellant herein came into possession of the suit property as a permissive user. He was an influential person. He was in control of affairs of the respondent – Corporation for years together. The appellant – plaintiff failed to make out a starting point of his claim for adverse possession. The first appellate Court reiterated the very reasons for dismissal of the appeal.

6. Mr. Brahme, learned counsel for the appellant – plaintiff would submit that the respondent – Corporation admitted the appellant – plaintiff to have been in possession of the suit property for over fifty years. The possession became adverse since 1980-81. The authorities of the respondent – Corporation accepted all kinds of taxes and recognised the appellant – plaintiff to be the owner of the suit property. Number of documents were placed on record in proof of the same. Learned counsel took this Court through pleadings and the evidence in the case to point out as to how the claim of the appellant – plaintiff gets proved. According to learned counsel, the first appellate Court has simply reproduced almost all the paragraphs of the trial Court's judgment. According to him, the first appellate Court without re-appreciating the evidence available on record merely copied findings of the trial Court in verbatim. Relying on the judgment of the Apex Court in *Bhanwarlal Dugar and Ors. Vs. Bridhichand Pannalal, (2010) 12 SCC 164* he would submit that the first appeal is nothing but rehearing of the

suit and the first appellate Court is bound to re-appreciate the evidence available on record and arrive at its own conclusion. According to learned counsel, if the same is not done by the first appellate Court, it is a fit case for remand of the suit. He would further submit that Order 41 Rule 26 of the Code of Civil Procedure has not been followed in letter and spirit.

7. Learned counsel for the appellant – plaintiff further relied on the judgment of the Apex Court in ***Ravinder Kaur Grewal and Ors. Vs. Manjit Kaur and Ors., (2019) 8 SCC 729*** to submit that the suit for declaration of title by adverse possession is very much maintainable. Observations in that regard made by the Court below are inconsistent with the Apex Court's judgment. Reliance is also placed on judgment of Apex Court in case of ***Santosh Hazari Vs. Purushottam Tiwari (Dead) by L.Rs., (2001) 3 SCC 179***. While on the question of protecting possession and grant of relief of injunction against unlawful interference with the possession, learned counsel has relied on the judgment of the Apex Court in case of ***Rame Gowda (D) by L.Rs. Vs. M. Varadappa Naidu (D) by L.Rs. And Ors., (2004) 1 SCC 158***. He ultimately urged for allowing the appeal.

8. Mr. Hon, learned senior counsel, appearing for the respondent – Corporation would, on the other hand, submit that the appellant – plaintiff had admittedly come in permissive possession of the suit property. He was in control of the affairs of the respondent – Corporation (erstwhile Council) for

years together. The pleadings are conspicuously silent to make out a starting point of adverse possession. According to senior counsel, both the Courts below have held the appellant – plaintiff to have failed to make out a case of title by adverse possession. No interference therewith is, therefore, required.

9. Considered the submissions advanced. Perused the pleadings and the evidence relied on. Gone through the judgments impugned herein. Section 27 of the Limitation Act spells out a consequence of failure to file a suit for possession of any property within a prescribed period of limitation. The proposed substantial question of law in that regard, therefore, need not be answered separately. The same gets covered by the substantial questions of law for decision of which this second appeal was admitted. Although the first appellate Court has produced number of paragraphs from the judgment of the trial Court, it (the first appellate Court) appears to have given it's own reasons for upholding the trial Court's judgment.

10. Before advertng to answer the substantial questions of law, it is apposite to refer to Article 65 of the Limitation Act. Same is, therefore, reproduced hereinbelow :-

| Description of suit                                                             | Period of limitation | Time from which period begins to run                                  |
|---------------------------------------------------------------------------------|----------------------|-----------------------------------------------------------------------|
| 65. For possession of immovable property or any interest therein based on title | Twelve years         | When the possession of the defendant becomes adverse to the plaintiff |

11. The possession must be adequate in continuity, in publicity and in extent to show that the possession is adverse to the true owner. It must start with a wrongful dispossession of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. There are no equities in favour of the person claiming title by adverse possession.

12. In the case in hand, the appellant – plaintiff gave the oral evidence reiterating the averments in the plaint. Paragraph No.7 of the plaint reads thus :-

*“7) **CAUSE OF ACTION** :- Cause of action for the present suit first time arose when plaintiff came in possession of the property 30-32 years back when school was run under the name and style as “Diwalibai Barshikar School”. Cause of action also arose when plaintiff has paid taxes from time to time as owner of the property. Not only that but challenged the assessment of the corporation. Cause of action also arose when various licenses were issued by defendant to the plaintiff. It also arose when defendant has accepted the possession and ownership of the plaintiff over the property. It also arose when defendant Corporation has issued notice on 20.09.2004 threatening the plaintiff to initiate action, it also arose on 21.09.2004 when by issuing notice reply plaintiff has directed to initiate legal action against them. It also arose day to day when defendant corporation’s officers are threatening the plaintiff that they will evict plaintiff from the premises. And it is still existing.”*

13. Admittedly, the appellant – plaintiff did not place on record any original document in proof of his claim. The property extract of the suit property was shown to the plaintiff in his cross-examination. It stands in the name of respondent – Corporation. When a person comes with the claim of adverse possession, implied therein is that such person admits ownership of someone else. It would be apposite to refer to some of the admissions given by the appellant – plaintiff in his cross-examination. He denied that the suit property was once owned by the respondent – Corporation. This admission proves fatal to the appellant's claim of adverse possession. He claims ignorance as to whether the suit property came to him under a registered sale-deed or not. He did not have any document of title. It is reiterated that the appellant admittedly came in possession of the suit property as a permissive user. A municipal school was being run in the suit property. The plaint is conspicuously silent to aver as to really when the permissive possession of the appellant became adverse to the true owner.

14. As such, there is no evidence to suggest the appellant's *animus possidendi*. It is reiterated that possession howsoever long cannot become adverse unless necessary ingredients to constitute title by adverse possession are averred in the plaint and proved by evidence. The trial Court has rightly non-suited the appellant. The first appellate Court, although reiterated almost all the reasons given by the trial Court, there is nothing to suggest the

judgment given by the first appellate Court to be perverse or inconsistent with the evidence in the suit. This Court does not find it to have not complied with the provisions of Order 41 Rule 26 of C.P.C.

15. The substantial question of law for the decision of which this second appeal was admitted is, therefore, answered in negative. Second appeal thus fails. Same is dismissed.

**( R.G. AVACHAT, J. )**

SSD