

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 262 OF 2018
WITH
CIVIL APPLICATION NO. 4387 OF 2018
IN
SECOND APPEAL NO. 262 OF 2018

1. Tukaram s/o Nemaji
Age: 74 years, Occu.: Agri.,
2. Venkati s/o Nemaji
Age: 70 years, Occu.: Agri.,
3. Maroti s/o Nemaji
Age: 65 years, Occu.: Agri.,

All R/o Bamni, Tq. & Dist. Nanded

..APPELLANTS

VERSUS

1. Narhari s/o Narayanrao Udgirkar
Age: 55 years, Occu.: Agri.,
R/o Ashoknagar, Nanded
2. Dattarao s/o Kauraji (Died)
3. Purbhaji s/o Kauraji
Age: Major, Occu.: Agri.,
4. Ramrao s/o Kauraji
Age: Major, Occu.: Agri.,
5. Rangoji s/o Kauraji (Died)
Through L.Rs.
- 5A. Gangabai Rangoji Kadam
Age: 58 years, Occu.: Agri.,
- 5B. Dulba Rangoji Kadam
Age: 40 years, Occu.: Agri.,

5C. Kavita Rangoji Kadam
Age: 38 years, Occu.: Household,

5D. Uttam Rangoji Kadam
Age: 36 years, Occu.: Agri.,

5E. Sudam Rangoji Kadam
Age: 33 years, Occu.: Agri.,

6. Shamrao s/o Kauraji
Age: Major, Occu.: Agri.,

Respondent Nos.3 to 6 R/o Bamni,
Tq. Ardhapur, Dist. Nanded

..RESPONDENTS

....
Mr. M.V. Ghatge, Advocate for appellants/applicants
Mr. U.B. Bilolikar, Advocate for respondent no.1

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 14th JUNE, 2022
PRONOUNCED ON : 11th AUGUST, 2022

JUDGMENT :

1. This second appeal has been preferred by the original Defendant Nos. 6 to 8 in Regular Civil Suit No. 53 of 2001. It was a suit filed by present Respondent No.1 – Narhari. Respondent Nos. 2 to 6 were the original Defendant Nos.1 to 5. It was a suit for possession of agricultural land specifically described in the plaint. The trial Court dismissed the suit only on the ground of want of evidence regarding plaintiff's dispossession. The trial Court has held the plaintiff to have failed to prove the possession over the suit property. The plaintiff preferred first appeal, being Regular Civil Appeal No. 122 of 2008. The said appeal came to be allowed granting the decree in toto. The appellate Court declared the plaintiff to be the owner of the suit land.

The defendants (appellants herein) were directed to hand over the plaintiff possession of the suit land within three months. Present second appeal has, therefore, been preferred.

2. This appeal is heard finally at admission stage with consent of learned counsel for the parties on the following substantial question of law :-

Whether the suit is governed by Article 64 of the Limitation Act, and therefore, the decree impugned herein is liable to be set aside in view of the plaintiff admitted to have been dispossessed twelve years before filing of the suit.

3. Learned counsel for the appellants would submit that the suit was based on dispossession of the plaintiff from the suit land. It has been averred in the plaint that the plaintiff was dispossessed from the suit land in February/March (Gudhipadawa) of the year 1989. The suit was filed on 17th January, 2001 i.e. twelve years after the plaintiff's dispossession from the suit land. According to learned counsel, the suit would necessarily be governed by Article 64 of the Limitation Act. The suit was barred by limitation. The first appellate Court, therefore, ought not to have granted decree in favour of the plaintiff. He would further submit that the suit land has not been specifically described. It is the question of identity of the suit land. An unexecutable decree cannot be passed. Learned counsel has relied on the following three authorities :-

(i) Ramiah Vs. N. Narayana Reddy (Dead) By Lrs., 2004 (7) SCC 541

Limitation Act, 1963 – Articles, 64, 65 – Limitation – Previous possession or title – In his evidence, appellant had admitted that he was in possession of the suit property up to 1971. This admission of the appellant in prior suit indicates ouster from possession of the appellant herein. In the present suit instituted by the appellant, he has glossed over this fact. In the circumstances, both the Court below were right in coming to the conclusion that the present suit was barred by limitation. The appellant was ousted in 1971. The appellant and instituted the present suit only on 8.5.1984. Consequently, the suit has been rightly dismissed by both the Courts below as barred by limitation.

Suit for possession – Limitation – If the suit is for possession by a plaintiff who says that while he was in possession of the property he was dispossessed, then he must show possession within 12 years under Article 142 (now Article 64) of the Limitation Act.

**(ii) Rajgopal (Dead) by L.Rs. Vs. Kishan Gopal and Another
AIR 2003 SC 4319**

(C) Civil P.C. (5 of 1908), S.96, S.100, O.6 R.2 – Finding – Not based on pleadings – Suit for declaration of title – Plaintiff putting up case of dwyamushyayana adoption – No plea raised that adopted child was not given in adoption by natural father – Defendants in the written statement, only denied that adoption was in ‘Dwyamushyayana’ form – In the absence of any pleading whatsoever on the question as to who gave child in adoption, father or brother – Courts could not have gone into the same even if some evidence was adduced.

(iii) Sayed Muhammed Mashur Kunhi Koya Thangal Vs. Badagara Jamayath Palli Dharas Committee and Others, AIR 2004 SC 4365

4. Learned counsel for Respondent No.1 – plaintiff took me through the averments in the plaint to submit that the case of dispossession has been averred in the plaint. It was in fact a suit for possession based on title. The suit would, therefore, be governed by Article 65 of the Limitation Act.

5. Considered the submissions advanced. In Narayan Reddy's case (supra), the Apex Court has observed as under :

'9. The question whether the article of limitation applicable to a particular suit is Article 64 or Article 65 has to be decided by reference to pleadings.'

The facts in the said case were as follows :-

"3. The facts on which this appeal has arisen are as follows :- One Bayyanna was owner of the suit land in Survey No.19/1 admeasuring 3 acres 12 gunthas. The suit land was Inam land. Bayyanna sold the suit land to N. Narayana Reddy (since deceased) father of the respondents herein, vide registered sale deed dated 04.11.1958. N. Narayana Reddy had instituted Suit No.357/60 in the Court of Principal Second Munsiff, Bangalore for recovery of possession based on title and for permanent injunction against the appellant herein on the ground that the appellant was trying to interfere with his possession.

4. *The defence of the appellant herein the above suit was that he had purchased the suit land on 27.11.1959 from B. Bayyanna and that he was in possession of the suit land. His further defence was that the suit land was Inam land and that he was registered as Khadim tenant by the Inam Abolition Authorities. By judgment and order dated 7.4.1971, the Principal Munsiff, Bangalore partly decreed the suit filed by N. Narayana Reddy holding him to be the owner of only 1 acre 21 gunthas and not of the entire land admeasuring 3 acres 12 gunthas. However, he was found to be in possession of the entire 3 acres 12 gunthas and, therefore, the Principal Munsiff granted permanent injunction in favour of N. Narayana Reddy restraining the appellant herein from interfering with the possession of N. Narayana Reddy on the entire suit land admeasuring 3 acres 12 gunthas with liberty to the appellant herein to take steps to recover possession of 1 acres 21 gunthas out of the total area of 3 acres 12 gunthas by following due process of law. By the aforesaid judgment, the Principal Munsiff, Bangalore came to the conclusion that N. Narayana Reddy was in possession of the entire area admeasuring 3 acres 12 gunthas; that the entire area was Inam lands and since an area admeasuring 1 acre 21 gunthas out of total area admeasuring 3 acres 12 gunthas was regranted by the Deputy Commissioner to the appellant herein, N. Narayana Reddy was not the owner of the entire area admeasuring 3 acres 12 gunthas."*

6. Reading of the plaint would indicate that Respondent No.1 – plaintiff has filed the suit for declaration that he is the owner of the suit land

and for possession thereof. It is true that in paragraph no.3 of the plaint it has been averred as follows :-

“3. That, on the day of Gudi Padwa in the year 1989, the defendants with the collusion of each other, dispossessed the plaintiff from the suit land by using man force and by showing mutation No. 190 dated 26.02.1989. Father of the defendants late Kauraji s/o Rangoji and other defendants No.6 to 8 dispossessed the plaintiff from the suit land. The plaintiff is a Government servant and after dispossession from the suit land, he was transferred, therefore he could not take proper steps for recovery of possession of the suit land and could not challenge the mutation entry No.190 due to lack of knowledge.”

7. The averments in paragraph no.8 of the plaint also need to be adverted to. Same are as under :-

*“8. That, possession of defendants over the suit land is illegal and unlawful and without any right and title. The defendants and revenue officers, with collusion, dispossessed the plaintiff from the suit land. **In fact, the plaintiff is owner of the said land and is entitled to recover possession of the suit land.**”*

8. It has been specifically averred in paragraph no.10 that on 08th October, 2000, the plaintiff approached the defendants and requested them to deliver possession of the suit land. The defendant denied the plaintiff's possession and ownership. The same is stated to be the cause of action for filing the suit.

9. It is reiterated that averments in the plaint and the relief claimed therein undoubtedly indicate the plaintiff to have filed the suit for possession on the basis of title. True, in paragraph no.3 of the plaint it has been averred that the defendants have dispossessed him in February/March 1989. It is also true that the suit has been filed twelve years after the plaintiff's dispossession. Order II of Code of Civil Procedure speaks of frame of suit. Rule 1 thereof reads as under :-

“1. Frame of suit. -Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.”

10 Rule III of Order II speaks of joinder of causes of action. The rule gives liberty to the plaintiff to unite in the same suit several causes of action against the same defendant, or the same defendants jointly. The cause of action for the present suit has been stated in the plaint as plaintiff's title to the suit land.

11. The appellants did not dispute plaintiff's title to the suit land. It is only their case that the suit is governed by Article 64 of the Limitation Act and is, therefore, barred by limitation. As has already been described above, the plaintiff can unite number of causes of action in one suit. Close reading of the plaint undoubtedly indicate the suit was filed for possession on the basis of title. The factum of dispossession of the plaintiff, way back in 1989,

has been averred incidentally. This Court is, therefore, of the view that the suit is necessarily be governed by Article 65 of the Limitation Act. The appellants have not raised any claim for adverse possession. The suit has, therefore, rightly been decreed by the first appellate Court. The substantial question of law is answered holding the suit to have been governed by Article 65 of the Limitation Act.

12. In the result, second appeal fails. Same is dismissed. In view of dismissal of second appeal, civil application is also dismissed.

(R.G. AVACHAT, J.)

SSD