

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**SECOND APPEAL NO. 755 OF 2017
AND
CIVIL APPLICATION NO. 14773 OF 2017**

Mohd. Nazim S/o Mohd. Hafizoddin,
(deceased through LRs.)

- 1] Halimbee W/o Nazim Hafizoddin,
Age 62 years, Occu. Household,
- 2] Naziroddin S/o Nazim Hafizoddin,
Age 42 years, Occ. Business,
- 3] Saher D/o Nazim Hafizoddin,
Age 39 years, Occ. Business,
- 4] Ziyozoddin S/o Nazim Hafizoddin,
Age 37 years, Occ. Business,
- 5] Rafikoddin S/o Nazim Hafizoddin,
Age 35 years, Occ. Business,
- 6] Tahera D/o Nazim Hafizoddin,
Age 32 years, Occ. Nil,
- 7] Jamiloddin S/o Nazim Hafizoddin,
Age 29 years, Occ. Business,
All R/o Umri, Tal : Umri,
District Nanded

.. Appellants
(Orig. Deft. No.1/LRs. Of
Deft. No. 1)

VERSUS

- 1] Chief Officer,
Nagar Parishad, Umri
- 2] Balchand S/o Govardhan Bettala,
(deceased through LRs.)
- 2A. Khushalchand S/o Balchand Bettala,
Age 73 years, Occu. Business
- 2B. Mahaveer S/o Balchand Bettala,
Age 49 years, Occu. Business
- 2C. Smt. Shakuntala Balchand Bettala,
Age 89 years, Occu. Nil,

All R/o. Umri, Tal. Umri,
District Nanded

3. Punamchabnd S/o Gangakishan Darda,
(since deceased through his LRs.)

3A. Smt. Umrabai W/o Punamchand Darda,
Age 94 years, Occu. Household,

3B. Parasmal S/o Punamchand Darda,
Age 77 years, Occu. Business,

3C. Mahaveer S/o Punamchand Darda,
Age 65 years, Occu. Business,

3D. Vinodkumar S/o Punamchand Darda,
Age 65 years, Occu. Business

3E. Sau. Padmabai W/o Dilip Darda,
Age 67 years, Occu. Household,

3F. Sau. Shantabai W/o Abhayraj Suma,
Age 65 years, Occu. Household,

All R/o Umri, Tal. Umri,
District Nanded

.. Respondents

...

Mr. P.R. Katneshwarkar, Advocate for appellants

Mr. D.A. Mane, Advocate h/f. Mr. G.P. Shinde, Advocate for respondents
no. 3B, 3C and 3D-Caveator

Mr. N.B. Jadhav, Advocate for respondent no. 2-A to 2-C

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CORAM : MANGESH S. PATIL, J.

DATE : 25 FEBRUARY 2022

ORAL ORDER :

This is the second appeal by the original defendant being aggrieved and dis-satisfied by the judgment and decree holding the respondents to be entitled to declaration of they being the owners of the suit property and for possession based on title.

2. The respondents claim to have derived the title on the basis of a sale deed dated 15-12-1967, from its original owner. They claim

that in the year 1989-1990 they became aware about the appellant having been in possession of the suit property and filed the suit on 15-02-1992.

3. The appellant contested the suit with a contention that he was in possession of the suit property since the year 1970. It was a barren plot of land. In the year 1990, since the respondent no. 1 Municipal Council started asserting to be the owner of the suit property, he started paying the municipal taxes and has been in continuous and peaceful possession of the suit property and had become the owner by adverse possession.

4. The trial court upheld the title of the respondent no.2 and 3, discarded the theory of adverse possession put forth by the appellant and decreed the suit which decree has been confirmed by the lower appellate court by the judgment and order under challenge.

5. The learned Advocate Mr. Katneshwarkar for the appellants would submit that absence of original sale deed and the power of attorney on the basis of which the sale deed was executed, by which the respondents no. 2 and 3 claim to have derived the title to the suit property having never been produced on record it gives rise to a substantial question of law as to if the title can be established in absence of document of title.

6. Mr. Katneshwarkar, learned advocate would further submit that when admittedly, the appellant has been in continuous possession

of the suit property since the year 1970, the suit filed in the year 1992 was clearly barred by limitation giving rise to a substantial question of law.

7. Per contra, the learned advocate for the respondents no. 2 and 3 would submit that there are concurrent findings of facts of the two courts below. Original owner of the suit property has not been questioning the title. The appellant being a stranger cannot challenge the sale deed or even the power of attorney. Since the original sale deed was not forthcoming and available to be produced, within the parameters of the provisions of the Evidence Act, the trial court had permitted the respondents no. 2 and 3 to produce secondary evidence. Certified copy of the sale deed was produced. It was duly proved by examining the Sub Registrar who had brought the original record. Therefore, there was no error in relying upon such evidence to uphold the title derived on the basis of the sale deed.

8. Learned advocate for respondents no. 2 and 3 would further submit that in-fact, the appellant had failed to prove adverse possession and consequently, by virtue of Article 65 of the Limitation Act, 193, the period of limitation never began to run.

9. Lastly, he would submit that there was no evidence to prove that the appellant was inducted in the suit property at any earlier point of time. Respondent no. 1 - Municipal Council had served him notices in the year 1990 which were duly proved and admitted on the record. He

had replied such notice and had sought 20 days time to vacate it. This conduct of his clearly demonstrates that he was inducted by the respondent no. 1 Municipal Council in the suit property, however, it was realized by the Municipal Council that the property did not belong to it and that is why the notices were issued calling upon the appellant to vacate the premises. It was a permissive possession of the appellant on behalf of the respondent no.1 Municipal Council, and he had no independent right to hold back the possession.

10. I have carefully considered the rival submissions and perused the papers. It is trite that the jurisdiction of this court while entertaining the second appeal under section 100 of the Code of Civil Procedure is limited.

11. As has been laid down in **Damodar Lal V. Sohan Devi and others; AIR 2016 SC 262** even if the concurrent findings of facts are erroneous, section 100 of the Code of Civil Procedure does not confer jurisdiction in this court to undertake further scrutiny and to arrive at a different conclusion than the one arrived by the courts below.

12. Since both the courts below have concurrently held on the basis of evidence that predecessors of respondents no. 2 and 3 had derived title to the suit property on the basis of sale deed in the year 1967 which was also duly proved on the record in the form of evidence of the Sub Registrar (PW 3), simultaneously holding the appellant to have failed to prove the necessary ingredients for constituting adverse

possession, the appeal does not give rise to any substantial question of law.

13. As has been rightly put by the learned advocate for the respondents no. 2 and 3, the appellant has no *locus standi* to challenge their title. The heirs of the original owners having never sought to challenge the alienation, once the sale deed stands duly established, there was no escape from the conclusion that the respondents no. 2 and 3 are the owners of the suit property, more so when the appellant made an attempt to prove his adverse possession but had failed.

14. Since it is a suit for possession based on title, in view of Article 65 of the Limitation Act, 1963, the period of limitation would begin to run when the appellant sets up a plea of adverse possession. He having failed to do so, it cannot be said that the suit was barred by limitation.

15. No substantial question of law arises in this second appeal. It is dismissed.

16. Pending civil application stands disposed of.

[MANGESH S. PATIL]
JUDGE

arp/