

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1281 OF 2016

Gopalkrishna Shivram Hegde

...Appellant

Versus

Synergy Securities Pvt.Ltd. & Anr.

...Respondents

Ms. Pinky M. Bhansali a/w Ms. Dharini Jain for the Appellant.
None for the Respondents.

CORAM : R.I. CHAGLA J

DATE : 29 November 2022

ORDER :

1. Heard the learned Advocate appearing for the Appellant.
2. The Respondent No. 2 is served and there is an Affidavit of Service dated 1st October 2019, which shows that the captioned First Appeal has been served along with Appellant's Advocate's covering letter to Respondent No. 2 on 30th September 2019 at the address mentioned in the cause title by hand delivery. This has been acknowledged by Respondent No. 2. With regard to Respondent No.

1, this Court had by order dated 3rd March 2020 considered Interim Application No. 1 of 2019, which had sought dispensation of the notice upon Respondent No. 1 or in the alternative sought permission to publish the notice of the present Appeal to be heard finally at the admission stage in the newspaper described in the prayer clause (b) of the Interim Application.

3. The said order had further recorded that the Respondent No. 1 has been served in the past insofar as the service of notice of the Trial Court proceedings is concerned by publication. This Court further observed that on a perusal of the record, it is noted that the Respondent No. 1 did not appear, though served by publication before the Trial Court. An attempt had been made by the Appellant to serve Respondent No. 1 personally, but the notice was returned with remark “*left*”. Affidavit of Service to that effect had been filed on 1st October 2019. Accordingly, this Court dispensed with the notice on Respondent No. 1 under Order 4 Rules 14(3) and (4). Interim Application was accordingly, made absolute in terms of prayer clause (a) and the First Appeal was placed on board for final disposal at the admission stage. The Appellant was directed to file paper book. Since none appeared for the Respondent No. 2, when the matter was called

out though served, the matter was to proceed *exparte*, if the Respondent No. 2 remains absent.

4. On the subsequent date, i.e. 20th December 2021, the Respondent No. 2 had not appeared and this Court had observed that by prior order dated 3rd March 2020, this Court had indicated that if none appears for Respondent No. 2, matter shall proceed *exparte* against Respondent No. 2. It was also observed that the Counsel for the Appellant had filed on record a private paper book.

5. The Appeal for hearing at the admission stage has accordingly, been listed.

6. The narrow conspectus that arises in the present First Appeal is with regard to the issue which had been framed and answered by the learned Single Judge of the City Civil Court, Mumbai in S.C. Suit No. 4929 of 2012, which is as under :-

<u>POINTS</u>	<u>FINDINGS</u>
i) Whether the plaintiff is entitle to claim ownership by way of adverse possession?	Partly yes.
ii) What Order?	Partly decreed.

7. This Court had considered the case of the Plaintiff that the Plaintiff had become owner of the suit premises being Office No. 603, Sharda Chambers Premises Co-operative Housing Society Ltd. by adverse possession and the rights of interest of Defendant No. 1 in the suit premises stands extinguished. A perpetual injunction under Section 38 of Specific Relief Act was sought restraining Defendant No. 1, their members, agents, representatives, creditors or any one claiming through them from taking forcible possession of the suit premises.

8. The case of the Plaintiff briefly stated that he was a practicing advocate and appeared for Corporate Group of P. Rajratnam, who hails from Chennai. The Plaintiff appeared in various matters for the Corporate Group from the year 1995-96 which also includes Defendant No. 1 who was a private limited company having their office mentioned in the cause title and is part of the P.Rajratnam Group. Defendant No. 2 is the Society which maintains the building where the suit premises is situated.

9. The Plaintiff's case is that the suit premises which belonging to the Defendant No. 1 was vacant. Accordingly, one N.

Ponnusamy, who was instructing the Plaintiff in the matters for the Corporate Group and who was also the Director of the Corporate Group, various ventures including Devsagar Ltd. and Synergy Group was in vacant possession of the suit premises. The Plaintiff learnt about the suit premises and forcibly took the keys from N. Ponnusamy and started occupying the suit premises since 16th October 1999. N. Ponnusamy was informed by the Plaintiff that the Plaintiff was occupying the suit premises against their interest and he shall continued to occupy suit premises adversely to the interest of the Corporate Group including Defendant No. 1. The Plaintiff has thereafter, been paying the outgoings of Defendant No. 2 Society including dues of Defendant No. 1 to the Defendant No. 2 Society. The Plaintiff's case is that he is in possession of the suit premises which is continuous open and hostile to the interest of Defendant No. 1. The possession has not been obstructed by any person, despite Defendant No. 1 being aware of the Plaintiff occupy the suit premises adversely to their interest. The Plaintiff has been in possession of the suit premises for over 12 years. Thus, the Plaintiff's case is that he is entitled to claim ownership of the suit premises by adverse possession.

10. After summons service, the Defendants remained absent and accordingly, the Suit was proceeded *exparte* by the learned Single Judge of the City Civil Court at Mumbai. Upon considering the pleadings and documents on record as well as the evidence, the learned Judge has held that the Plaintiff is in possession over the suit property with the knowledge of the Defendants for over 12 years. The Plaintiff is in uninterrupted possession over the suit property since 13th September 1999 and has been paying the outgoing charges, maintenance charges, electricity bills.

11. The learned Single Judge of the City Civil Court at Mumbai, though partly decreeing the Suit by perpetually restraining the Defendants from taking possession of the suit premises without availing due process of law has rejected the claim of the Plaintiff for declaration of ownership on the ground of adverse possession on the basis of the decision of the Apex Court in **Gurudwara Sahib Vs. Gram Panchayat Village Sirthala & Anr.**¹. The learned Single Judge has held that even if the Plaintiff is found to be in adverse possession, it cannot be seek a declaration to the effect that such advance

¹ 2014(4) Mh.L.J.74

possession had matured into ownership. Only if the proceedings are filed against them, arraying as Defendant that the adverse possession can be used as a shield/defence. Learned Single Judge accordingly, held that the facts of the present case is identical as in the case of **Gurudwara Sahib** (supra) and the submission of the Plaintiff could not accepted.

12. Learned Advocate appearing for the Appellant has submitted that the sole ground on which the Plaintiff's claim for declaration of ownership on the basis of adverse possession was rejected, is the decision of the Supreme Court in **Gurudwara Sahib** (supra). However, in view of change in law as laid down by the Supreme Court in case of the **Ravinder Kaur Grewal & Ors. Vs. Manjit Kaur & Ors.**², this finding of the learned Single Judge of the City Civil Court is erroneous.

13. The Supreme Court in **Ravinder Kaur Grewal** (supra), has held that the decision in **Gurudwara Sahib** (supra), which has been relied upon in **State of Uttarakhand Vs. Mandir Sri**

2 (2019)8 SCC 729

Laxman Sidh Maharaj³ and in **Dharampal Vs. Punjab Wakf Board**⁴ cannot be said to be laying down the law correctly, and are hereby overruled. The Supreme Court has accordingly, held that the plea of acquisition of title by adverse possession can be taken by the Plaintiff under Article 65 of the Limitation Act, 1963 and there is no bar under the Limitation Act, 1963 to sue on the aforesaid basis in case of infringement of any rights of a Plaintiff.

14. Learned Advocate for the Appellant has accordingly, submitted that in view of the change in law as laid down by the Supreme Court in **Ravinder Kaur Grewal** (supra), the impugned judgment and order insofar as it dismisses the claim of the Plaintiff for declaration of ownership requires to be set aside.

15. I have considered the submissions of the learned Advocate for the Appellant as well as noted that the impugned judgment and order was passed *ex parte* in view of the Defendants remaining absent, despite the summons served. The court below though arriving at a finding that the Plaintiff was in uninterrupted

3 (2017) 9 SCC 579

4 (2018) 11 SCC 449

possession over the suit property since 13th September 1999 i.e. over 12 years and to the knowledge of the Defendants based on the pleadings, evidence as well as documents on record, the declaration by way of adverse possession could not be granted to the Plaintiff in view of the decision of the Supreme Court in **Gurudwara Sahib** (supra). Thus, the issue as to whether the Plaintiff is entitled to claim ownership by adverse possession was partly held in the affirmative and there was a partial decree granted by the lower court.

16. Considering that **Gurudwara Sahib** (supra) has been overruled in **Ravinder Kaur Grewal** (supra) as held to be not laying down the law correctly, the impugned judgment and order requires to be set aside. The Supreme Court has in **Ravinder Kaur Grewal** (supra) held that the plea of acquisition of title by adverse possession can be taken by the Plaintiff under Article 65 of the Limitation Act, 1963 and there is no bar under the Limitation Act, 1963 to sue on the aforesaid basis in case of infringement of any rights of the Plaintiff. Accordingly, the City Civil Court has erroneously rejected the plea of the Plaintiff for declaration of ownership, by way of adverse possession.

17. The lower court having arrived at a finding that the Plaintiff is in uninterrupted possession of the suit premises since 13th September 1999, that is over a period of 12 years, and to the knowledge of the Defendants, the Plaintiff was entitled to a declaration of ownership of the suit premises by way of adverse possession. This particularly, since the Plaintiff had forcibly taken keys from N. Ponnusamy, who instructed the Plaintiff in all the matters and who was also the Director of Corporate Group to whom the Plaintiff represented. The Plaintiff had openly informed N. Ponnusamy who was representing Defendant No. 1 which is the part of Corporate Group of P. Rajratnam that he is occupying the suit premises against their interest, and shall continue to do so adversely to the interest of Corporate Group including Defendant No. 1. The Plaintiff having continued to so occupy the suit premises without any obstruction from the Defendant No.1 or any person from the year 1999 and paid all outgoings to Defendant No.2, is entitled for declaration of ownership of the suit premises by way of adverse possession.

18. Accordingly, the impugned judgment and order is partly set aside to the extent that it has dismissed the claim of the

Plaintiff for declaration of ownership of the suit premises by way of adverse possession. Accordingly, the following order and decree is passed. :-

- (i) The Plaintiff is declared as owner of the suit premises, i.e. Office No. 603, Sharda Chambers Premises Co-operative Housing Society Ltd. by way of adverse possession.
- (ii) The impugned judgment and order dated 14th March 2016 is accordingly, set aside to the above extent.
- (iii) The decree shall be accordingly, drawn up.
- (iv) First Appeal is disposed of accordingly.

[R.I. CHAGLA J.]