

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

SECOND APPEAL NO. 414 OF 2018

- 1 Sau. Manjusha w/o Manohar Jillewar
Aged 52 years, Occu. Household work

- 2 Manohar s/o Ambadas Jillewar
Aged 57 years, Occu. Cultivator
Both R/o At Post – Jawala, Tq. Arni,
Dist. Yavatmal

Appellants

Versus

Dattatraya Dnyaneshwar Jillewar
Aged 79 years, Occu – Nil
Through Special Power of Attorney,
Dilip Dattatraya Jillewar
Aged 42 years, Occu. Cultivator & Service,
R/o At Post – Jawala, Tq. Arni, Dist. Yavatmal

Respondent

WITH

SECOND APPEAL NO. 298 OF 2021

Dattatraya Dnyaneshwar Jillewar
Aged 83 years, Occu – Nil
Through Special Power of Attorney,
Dilip Dattatraya Jillewar
Aged 45 years, Occp. Cultivator & Service,
R/o Post – Jawala, Tah. Arni, Dist. Yavatmal

Appellant

Versus

- 1 Sau. Manjusha w/o Manohar Jillewar
Aged 48 years, Occp. Home-maker

2 Manohar Ambadas Jillewar
 Aged 53 years, Occu. Cultivator
 Both R/o Post – Jawala, Tah. Arni,
 Dist. Yavatmal

Respondents

SA No.414/2018

Mr. R.D. Bhuibhar, Advocate with Mr. G.R. Kothari, Advocate for Appellants

Mr. U.J. Deshpande, Advocate for respondent

SA No.298/2021

Mr. U.J. Deshpande, Advocate for Appellant

Mr. R.D. Bhuibhar, Advocate with Mr. G.R. Kothari, Advocate for respondents

CORAM : MANISH PITALE, J.

DATE : 28th APRIL 2022

ORAL JUDGMENT

Both these appeals, arise out of judgment and order dated 18/06/2018 in Regular Civil Appeal No.24/2011, passed by the Court of District Judge, Darwha (hereinafter referred to as Appellate Court), whereby the appeal filed by the respondent (original plaintiff) was partly allowed and the relief granted to the respondents therein i.e. original defendants of declaration of title by way of adverse possession was quashed and set aside. The Appellate Court confirmed the decree of the Court of Civil Judge, Junior Division, Arni (hereinafter referred to as the Trial Court), whereby the suit for possession filed by the original plaintiff was rejected.

2. In Second Appeal No.414/2018, this Court issued notice on the following substantial question of law by order dated 13/08/2018.

“In the light of averments in paragraph 5 of the written statement at Exhibit-21, whether the appellate Court was legally correct in denying the relief of declaring the defendant to have acquired the title by way of adverse possession?”

3. In Second Appeal No.298 of 2021, this Court by order dated 07/04/2022, issued notice on the following substantial question of law.

“Whether the Courts below were justified in holding that the suit filed by the appellant was barred by limitation?”

4. Both these appeals were heard together on the aforesaid substantial questions of law. For convenience, the parties are being referred to on the basis of their status before the Trial Court.

5. The plaintiff i.e. the appellant in S.A. No. 298/2021, filed suit for removal of encroachment and possession before the Trial Court on 05/01/2007, claiming that he was entitled to possession of land admeasuring 0.64 H.R., village Jawala, Tah. Arni, District Yavatmal. It was claimed that the defendants i.e. the appellants in S.A. No. 414/2018, had illegally encroached upon the land and forcibly dispossessed the plaintiff in the year 1980-81. The

plaintiff claimed ownership of the suit land on the basis of a Will executed by the father of the original defendant No.2. The relationship between the parties is not disputed. The plaintiff is the first cousin of the defendant No.2. The defendant No.1 is the wife of defendant No.2.

6. The defendants filed their written statement opposing the claims made in the aforesaid suit as regards the entitlement to possession. It was specifically pleaded that the defendants had continued in possession of the suit property since the year 1980-81 openly, peaceably and continuously. On this basis, the defendants raised a counter claim for declaration that they had acquired title by adverse possession. The defendants also claimed that the suit filed by the plaintiff was barred by limitation. By judgment and order date 23/08/2011, the Trial Court dismissed the suit filed by the plaintiff and decreed the counter claim. It was found that the suit filed by the plaintiff was barred by limitation, for the reason that the material on record clearly demonstrated that the suit being filed in the year 2007, was beyond the limitation period of 12 years within which the plaintiff could have filed the suit for removal of encroachment and for possession, considering that even according to the plaintiff, he stood forcibly dispossessed in the year 1980-81. It was also found that the defendants were able to prove their case of having acquired title by adverse possession and accordingly, the declaration as sought by them was granted.

7. Aggrieved by the same, the plaintiff filed the aforesaid appeal before the Appellate Court. As noted above, the appeal was partly allowed, the dismissal of the suit was upheld, while the declaration on the basis of adverse possession granted by the Trial Court was set aside. This was primarily on the basis of position of law enunciated by the Hon'ble Supreme Court in the case of **Gurudwara Sahib vs Gram Panchayat Village Sirthala and another** reported in **2014 (1) SCC 669**.

8. Since the Appellate Court only partly allowed the appeal, both the plaintiff and the defendants were aggrieved and filed the instant appeals, wherein notice was issued on the aforesaid substantial questions of law framed in the appeals.

9. Mr. R.D. Bhuibhar, learned counsel appearing for the original defendants submitted that the Appellate Court erred in interfering with the declaration granted by the Trial Court about the defendants having obtained title by adverse possession. It was submitted that on facts, the Appellate Court agreed with the findings of the Trial Court as regards the defendants having openly, peaceably and continuously remained in possession for more than 12 years in the suit property, but, the declaration given by the Trial Court was interfered with on the basis of the position of law enunciated by the Hon'ble Supreme Court in the case of

Gurudwara Sahib vs Gram Panchayat Village Sirthala and another (supra). It was submitted that the said position of law now stood overruled expressly by the subsequent judgment of the Hon'ble Supreme Court in the case of **Ravinder Kaur Grewal and Ors. Vs. Manjit Kaur and Ors.** reported in (2019) 8 SCC 729. It was submitted that in view of the findings of facts being returned concurrently in favour of the defendants and the position of law now being clarified by the Hon'ble Supreme Court, the view taken by the Appellate Court is rendered unsustainable and, therefore, the appeal filed by the defendants before this Court deserves to be allowed and the judgment and decree passed by the Trial Court deserves to be restored.

10. The learned counsel for the original defendants relied upon the aforesaid judgment of the Hon'ble Supreme Court in the case of **Ravinder Kaur Grewal and Ors. Vs. Manjit Kaur and Ors.** (supra). Apart from this, the learned counsel relied upon judgment of the Hon'ble Supreme Court in the case of **Ramiah Vs. N. Narayana Reddy (Dead) by LRs.** reported in (2004) 7 SCC 541.

11. On the other hand, Mr. U.J. Deshpande, learned counsel appearing for the original plaintiff submitted that while the Appellate Court was justified in reversing the declaration granted by the Trial Court in favour of the defendants, it had erred in confirming the dismissal of the suit filed by the plaintiff. It was

submitted that the suit filed by the plaintiff could not be said to be barred by limitation, for the reason that the period of limitation stood triggered in the year 2006, when the defendants initiated proceedings under the provisions of the Maharashtra Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958. It was further submitted that the pleadings and evidence on record clearly demonstrated that the trigger point of limitation was the year 2006 and not 1980-81, as held concurrently by the two Courts below. On the question of adverse possession, despite the position of law being clarified in the latest judgment of the Hon'ble Supreme Court in the case of **Ravinder Kaur Grewal and Ors. Vs. Manjit Kaur and Ors.** (supra), on facts, it could be demonstrated that the plea of adverse possession raised on behalf of the defendants was not sustainable. Specific reliance was placed on the judgments of the Hon'ble Supreme Court in the case of **Nanjegowda alias Gowda (Dead) by legal representatives and another Vs. Ramegowda** reported in (2018) 1 SCC 574, wherein it was emphasized that when the rival parties were members of the same family and cousins, the plea of adverse possession was not tenable. Reliance was also placed on the judgment in the case of **Deva (Dead) through LRs. VS. Sajjan Kumar (Dead) by LRs.** reported in (2003) 7 SCC 481, on the question of animus possidendi.

12. This Court heard the learned counsel for the rival parties on the above quoted substantial questions of law on which notices

were issued in the two appeals. This Court is first taking up the issue of limitation as regards the suit filed by the original plaintiff before the trial Court.

13. A perusal of the plaint in the present case would show that even according to the plaintiff, he was forcibly dispossessed in the year 1980-81 by the defendants. It is then claimed that he did make attempts to retrieve possession from the defendants, but, they were continuously avoiding to get the possession. It was then pleaded that notice was issued on behalf of the plaintiff in the year 2006, which was ignored by the defendants and on the basis of such cause of action, the suit came to be filed on 05/01/2007. In this regard, Article 64 of the Limitation Act, 1963, assumes significance, for the reason that the plaintiff filed the suit in the present case on the basis of his claim that he was in possession and that he came to be forcibly dispossessed in the year 1980-81, by the defendants. Under Article 64 of the Limitation Act, the trigger point for limitation in such a case is the date of dispossession. Even if the pleading of the plaintiff is to be accepted, in the present case, the period of limitation stood triggered in the year 1980-81, when according to the plaintiff himself, he stood forcibly dispossessed. The suit was admittedly filed on 05/01/2007, which was well beyond the period of limitation of 12 years, prescribed in the said Article. The two Courts below appreciated the pleadings and the evidence on record in the correct perspective to come to a

considered conclusion that since the period of limitation stood triggered in 1980-81, the suit filed on 05/01/2017, was clearly barred by limitation.

14. Despite attempts being made by the learned counsel for the plaintiff that the concurrent findings could be said to be perverse in the light of the pleadings and evidence on record, this Court is unable to agree with the aforesaid contention. This is for the reason that a bare reading of the pleadings in the plaint itself demonstrate that the cause of action for the plaintiff occurred in the year 1980-81, when he was forcibly dispossessed, according to his own pleadings. There was a feeble attempt made to claim that the period of limitation stood triggered in the year 2006, when notice was issued on behalf of the plaintiff. But, the said theory cannot be accepted because once the period of limitation starts, it continues and there is nothing on record to show that the period of limitation could have been calculated from any point other than the year 1980-81. Therefore, the concurrent findings rendered by the Courts below that the suit was barred by limitation are unexceptionable and hence, the substantial question of law framed in S.A. No.298/2021, is answered against the appellant therein i.e. the original plaintiff and in favour of the original defendants.

15. Insofar as the substantial question of law framed in S.A. No.414 of 2018 is concerned, it is found that the same necessarily

concerns the question of entitlement of the defendants for declaration of title on the basis of adverse possession. Despite the fact that the Appellate Court reversed the declaration given by the Trial Court in favour of the defendants, a perusal of the impugned judgment and order passed by the Appellate Court shows that on an analysis of the pleadings and evidence on record, the Appellate Court also came to the conclusion that the defendants were indeed openly, peaceably and continuously in possession of the suit property from the year 1980-81. Thus, findings of facts in this regard are concurrently in favour of the defendants. But, the only reason why the Appellate Court reversed the declaration granted by the Trial Court was the position of law, as laid down by the Hon'ble Supreme Court in the case of **Gurudwara Sahib vs Gram Panchayat Village Sirthala and another** (supra), wherein it was held that a declaration of title on the basis of adverse possession could not be sought, because such a plea could be used only in defence as a shield and not as a sword.

16. The said position of law stood expressly overruled by subsequent judgment rendered by the bench of Hon'ble Three Judges of the Supreme Court in the case of **Ravinder Kaur Grewal and Ors. Vs. Manjit Kaur and Ors.** (supra). In the said subsequent judgment of the Hon'ble Supreme Court, it has been categorically held that the plea of adverse possession cannot only be used as a shield but it can be used as a sword by litigants for claiming

declaration of title on the basis of adverse possession. The position of law being clarified and the earlier judgment in the case of **Gurudwara Sahib vs Gram Panchayat Village Sirthala and another** (supra), being expressly overruled must accrue to the benefit of the defendants.

17. Faced with this situation, the learned counsel appearing for the plaintiff submitted that even if the position of law as clarified by the Hon'ble Supreme Court may indicate that the declaration of title on the basis of adverse possession can be granted, on facts, in the present case the defendants had failed to prove that they had indeed acquired title by way of adverse possession. Much emphasis was placed on the judgments of the Hon'ble Supreme Court in the cases of **Nanjegowda alias Gowda (Dead) by legal representatives and Deva (Dead) through LRs. VS. Sajjan Kumar** (supra). In the said judgment of the Hon'ble Supreme Court in the case of **Nanjegowda alias Gowda (Dead) by legal representatives** (supra), it is not laid down as a wide proposition that when the rival parties are members of a family and plea of adverse possession is raised by one of the parties, the same cannot be successfully proved, only because the suit property can be said to be belonging to the members of the same family or that the parties involved happen to be cousins.

18. A proper analysis of the aforesaid judgment would indicate

that in the said case, it was found that ancestral properties were involved and members of the same family could not prove animus possidendi. In the present case, the rival parties have proceeded on the basis that the plaintiff had acquired the suit property on the basis of a Will executed by father of the original defendant No.2. Although attempts were made by reading the evidence on record to contend that the ownership of the plaintiff was denied by the defendant No.2, a proper appreciation of the evidence of defendant No.2 indicates that he never denied the ownership of the plaintiff in the suit property and instead claimed that the defendants had been in possession of the same openly, peaceably and continuously. Therefore, reliance placed on the judgment in the case of **Nanjegowda alias Gowda (Dead) by legal representatives** (supra), cannot be assistance to the plaintiff.

19. Insofar as the judgment in the case of **Deva (Dead) through LR.s. VS. Sajjan Kumar** (supra), there can be no quarrel with the proposition regarding animus possidendi laid down in the said judgment. In fact, applying the said position of law to the facts of the present case, it becomes clear that while the suit filed by the plaintiff was barred by limitation under Article 64 of the Limitation Act, the defendants did prove through their pleadings and evidence that they continued in possession of the suit property openly, peaceably and continuously for more than a period of 12 years. Hence, they were indeed entitled to the declaration granted

in their favour by the Trial Court.

20. The case of the original defendants on the aspect of adverse possession stood further fortified by findings on facts on this aspect rendered by the Appellate Court in their favour. It was only because of the then prevailing position of law that the Appellate Court reversed the declaration given by the Trial Court in favour of the defendants.

21. In view of the above, it is found that the substantial question of law in Second Appeal No.414/2018, deserves to be answered in favour of the appellants therein i.e. the original defendants and against the original plaintiff.

22. In view of the above, Second Appeal No.414/2018, is allowed. The judgment and order passed by the Appellate Court to the extent that it reversed the declaration given by the Trial Court in favour of the defendants is set aside and the decree passed by the Trial Court is restored in its entirety.

23. Second Appeal No.298 of 2021 stands dismissed. No order as to costs.

JUDGE

MP Deshpande