

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

WRIT PETITION NO. 6632 OF 2022

Sumit Babulalji Bhangе (Motiram Rangaba Bhangе since deceased) __ Vs. __ Neeraj
Jugalkishor Sarda

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. N.R.Bhishikar, Advocate for petitioner
Mr. A.Shelat, Advocate for respondent
Mr. Arjun Raoka, Advocate for caveater

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/11/2022

1] Heard Mr. Bhishikar, learned counsel for the petitioner and Mr. Shelat, learned counsel for the respondent.

2] The petition challenges the judgment and decree dated 24.7.2020 in RCS No.236/2013 (pg.70) passed in the suit filed by the Respondent/Plaintiff for eviction of the Petitioner/Defendant from the open land admeasuring 30 ft x 110 ft, which is a portion of Plot No.40, situated at the Industrial Area Improvement Scheme, Timber Market, Circle No.2, Ghat Road, Nagpur, occupied by the Petitioner/Defendant and the judgment of the Appellate Court dated 6.5.2022 dismissing the appeal (pg 113).

3] Learned counsel for the petitioner raises following contentions :

(a) that the relationship of landlord and tenant between the petitioner and the respondent was always disputed by the petitioner/tenant.

(b) that since the predecessor in title of the petitioner viz. his grand-father Motiram Bhange had laid a claim to the suit property on the basis of an oral agreement of the year 1978, and no proceedings for eviction were filed, nor any rent was demanded, the defendant/petitioner had perfected his title by adverse possession.

(c) since the cause of action has arisen in 1978, the suit for eviction filed in 2013, was barred by limitation,

on account of which the judgment and decrees passed by the Courts below are clearly not sustainable in law and therefore were required to be quashed and set aside.

4] Mr. Shelat, learned counsel for respondent/plaintiff submits that there is a continuous cause of action for eviction and therefore the suit cannot be held to be barred by limitation. He also contends that in RCA No. 12/1985, decided on 2.8.1991, a finding has been rendered regarding the existence of the relationship of landlord and tenant between the plaintiff and the defendant and a decree for arrears of rent was passed,

which has not been challenged further in Second Appeal and therefore the finding has attained the finality. He further contends that the plea of oral agreement has been turned down by the Courts and therefore is not available to the petitioner/tenant.

5] The following is the admitted position between the parties.

(a) The land in question originally belongs to the Ghare family, who is claimed to have inducted the grand-father of the petitioner as a tenant in the suit open land sometime earlier to 1978. In the year 1978, the suit land was sold by the Ghare Family to one Premlatadevi and Radhalatadevi Sarda by virtue of a sale deed dated 10.11.1978. The plaintiff/petitioner is the son of Premlatadevi Sarda.

(b) In the year 1978 itself, the grand-father of the defendant/petitioner had claimed an oral agreement for sale of the suit land in his favour and had filed a suit for specific performance namely SCS No. 170/1978, which came to be dismissed on 19.9.1983, appeal against which being First Appeal No. 84/1984 was dismissed on 27.11.1992.

(c) RCS No. 1689/1982 was filed by Premlatadevi and Radhalatadevi Sarda against Motiram Bhange, the grand-father of the petitioner/ defendant, claiming arrears of rent. The suit was dismissed on 9.10.1984, against which an appeal was filed being RCA 12/1985, which came to be decreed on 2.8.1991, whereby a decree for arrears of rent was passed against Motiram Bhange, the grand-father of the petitioner.

(d) Thereafter, a notice to quit was issued on 29.12.2012 under Section 106 of the TP Act and a suit for eviction being RCS No. 236 of 2013 came to be filed, which was decreed by the judgment and decree dated 24.7.2020 directing eviction. Appeal against the same being RCA 42/2021 by the petitioner/tenant has been dismissed on 6.5.2022.

6] It is on the basis of the above undisputed position, that the contentions raised above are to be considered.

7] In so far as the first contention that there is no relationship of landlord and tenant between the petitioner and the respondent is concerned, it is material to note that the plea raised by the grand-father of the

petitioner (Motiram Bhangе) of an oral agreement of sale in his favour, in SCS No. 170/1978, stands dismissed, which dismissal has been confirmed in FA. No.84/1984. Thus this plea of the grand-father (Motiram Bhangе) or the petitioner/defendant being in possession under an oral agreement on account of part performance whereby the relationship of landlord and tenant changed was clearly not available to Motiram Bhangе during his life time on account of dismissal of his suit and since the defendant/petitioner claims to be in possession of the property in question through Motiram Bhangе, the said plea is also not available to the petitioner/defendant too.

8] So also the finding rendered in RCA No.12/1985 decided on 2.8.1991 that on account of Motiram Bhangе being the tenant of the property in question, he was liable to pay arrears of rent and the passing of a decree for arrears of rent of Rs. 5,400 along with interest at 10% per annum from the date when each months' rent became due till the realization of the same against him by the 10th Additional District Judge, Nagpur, in absence of the challenge to the same would equally be binding upon the present petitioner/defendant, for the same reason that he claims occupation of the property through Motiram Bhangе, his grand-father and not otherwise. Thus, the finding rendered in RCA No. 12/1985 is clearly binding upon the petitioner/defendant.

9] Since it is not disputed that the plaintiff/respondent is the son of Premlatadevi Sarda, who had the sale deed of the suit property in her favour i.e dated 10.11.1978 along with Radhalatadevi Sarda, even if the plea of any relinquishment/release/will as claimed by the plaintiff from Radhalatadevi is ignored, however he being the legal heir of Premlatadevi Sarda, who is no more having passed away on 7.6.2011, he would clearly fall within the definition of a “lessor” as contemplated by the provisions of Section 105 of the TP Act and therefore would be competent to institute the suit for eviction.

10] For the purpose of claiming a title by way of adverse possession, the requirements are clear and explicit, inasmuch as, one of them mandates that there should be assertion of a hostile animus by the person claiming such assertion as against the original owner to the knowledge of the original owner. In ***Tanaji ..vrs... The State of Maharashtra and ors*** reported in MANU/MH/2778/2019, I have considered this position and held as under :

18. The plea of adverse possession necessarily mandates the assertion of an “Animus possidendi“, and unless the person possessing the land has a requisite animus, the period for prescription does not commence. It is a settled position of law that peaceful, open and continuous possession for whatever time, does not constitute an “Animus possidendi”. In other words, mere physical fact of exclusive possession, is not enough. The “Animus possidendi” to hold as owner in exclusion to the actual owner, to his knowledge, is the most important factor to

establish a plea of adverse possession. Therefore, a person, who claims adverse possession, should state/show:

(a) Admit that he is not owner of the land in respect of which he claims a declaration of ownership by way of adverse possession;

(b) admit the title of the owner to the property to which he claims a declaration of ownership by way of adverse possession;

(c) on what date he came into possession;

(d) what was the nature of his possession;

(e) whether such possession was on account of wrongful dispossession of the original owner;

(f) whether such dispossession was actual, visible, exclusive;

(g) whether the factum of dispossession was known to the rightful owner;

(h) whether there was any hostile assertion of title to the knowledge of the rightful owner;

(i) the date of such hostile assertion and the continuity of the same throughout the statutory period, to the knowledge of the rightful owner;

(j) the document which may demonstrate such hostile assertion, if there is any;

(k) in case his possession relates to or stems from agreement/document or is in the nature of permissible user, there ought to be a document in writing who demonstrates his claim of adverse possession satisfying all the ingredients as required, as an oral plea would naturally stand excluded, considering his entry was under a document or was permissible;

These are some of the ingredients necessary for raising and establishing a plea for adverse possession.

It is thus apparent that possession howsoever long, without assertion of any hostile animus by itself, cannot

be held to satisfy the requirement of claiming a title by way of adverse possession. Merely because rent has not been claimed for years together, or any proceedings for eviction have not been initiated, the same by itself cannot be held to satisfy the requirements of a plea of adverse possession. For establishing the plea, it has to be demonstrated, that there is a point at which the assertion of hostile title has been made. Merely because in SCS 170/1978 Motiram Bhange grand-father of the petitioner had raised the plea of oral agreement, in which suit Premlatadevi and Radhalatedevi Sarda have also been added as defendants and the sale deed in their favour had been disputed, the same cannot be said to be assertion of any hostile animus as is required to establish the plea of adverse possession.

11] This is more so when RCS No.12/1985, which was filed by Premlatadevi and Radhalatadevi Sarda against Motiram Bhange (the grand father of the defendant/petitioner), the relationship of landlord and tenant between them was held to have been established and a decree for arrears of rent was passed. The petitioner/defendant who is claiming through Motiram Bhange therefore cannot contend otherwise and is bound by the findings rendered in RCA 12/1985.

12] There is nothing on record after 2.8.1991, to indicate that the defendant/petitioner on his own ever

asserted any hostile title in respect of property in question viz-a-viz Premlatadevi and Radhalatadevi Sarda, at any point of time whatsoever. The plea of adverse possession is only based upon the actions of his grandfather Motiram Bhang and not upon any act attributable to the defendant/petitioner. That being the position, I am unable to accept the contention that the petitioner/defendant had perfected his title by way of adverse possession.

13] As regards the third contention that since an oral agreement was claimed in the year 1978 and the suit for eviction has been filed in the year 2013 and therefore it was barred by limitation, the contention is misconceived, for the reason that the cause of eviction on account of the existence of relationship of landlord and tenant as is spelt out from the decree in RCA No. 12/1985 is a continuous cause and the cause to file the suit for eviction would arise when the tenancy stood terminated by notice under Section 106 of the TP Act. Since in the instant case the tenancy was in respect of open land and therefore, considering the definition of “premises” as occurring in Section 7(9) of the Maharashtra Rent Control Act, the provisions thereof were clearly not attracted and the notice having been given on 29.12.2012 and the suit having been filed 26.6.2013 is clearly within limitation, as a result of which

I am also not in a position to accept this contention too and the same is rejected.

14] No other arguments being canvassed, the petition is accordingly dismissed. No costs.

JUDGE

Rvjalit