

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

SECOND APPEAL No.529 of 2015

JUDGMENT :

This Second Appeal is arising out of the judgment and decree dated 01.06.2015 in A.S.No.18 of 2014 on the file of VII Additional District Judge, Bodhan, which is arising out of the judgment and decree dated 23.04.2014, passed in O.S.No.25 of 2003 on the file of Junior Civil Judge, Bodhan.

2. For the sake of convenience, the parties are referred to as arrayed before the trial Court. The appellant is the 1st defendant.

3. Initially, the suit is filed by the plaintiff against the defendants seeking relief for specific performance and for perpetual injunction. The brief averments of the plaint are that the plaintiff is the owner of the suit land by virtue of oral gift made by his maternal grand father Shaik Hussain, when plaintiff was a small boy. It is important to note that the mother of the plaintiff married another person and as the father of the plaintiff is no more, his maternal uncles Abdul Wahed and Mohd. Rahman were put in possession of the suit schedule land, who looked after it and the plaintiff used to stay along with them. It

is pertinent to mention that the plaintiff's maternal uncles gave the suit land on Batai Basis (on lease) to one Pallikonda Chinnana, i.e., father of defendant Nos.1 and 2, husband of defendant No.3 and father-in-law of defendant No.4. Further, Pallikonda Chinnana filed O.S.No.140 of 1985 on the file of Junior Civil Judge, Bodhan against the maternal uncles of the plaintiff for specific performance of sale dated 21.05.1967 and the said suit was dismissed on merits with a finding that the plaintiff is the true owner of the suit land. Later, the plaintiff shifted to Maharashtra for his livelihood and after coming back, he came to know that Pallikonda Chinnana died and his sons i.e., defendant Nos.1 and 2 were in possession of the property and therefore, filed the present suit for recovery of possession.

4. Defendant Nos.1 and 2 filed a detailed written statement denying the averments in the plaint but admitted about the filing of O.S.No.140 of 1985 which was decreed in favour of the plaintiff. It is the specific contention of the defendants that in spite of decree in O.S.No.140 of 1985, they were in continuous possession of the suit schedule property, even after the death of their father and further

denied title of the plaintiff and also took a specific plea that the suit is barred by limitation and they got title by virtue of adverse possession.

5. Basing on the pleadings, the trial Court has framed the following issues:-

- “1. Whether the suit brought by the plaintiff is maintainable in law?
2. Whether the defendants are in lawful possession of suit schedule property?
3. Whether the plaintiff is entitled for recovery of possession of suit schedule property?
4. If so, to what relief?”

6. During the course of the trial, on behalf of the plaintiff, P.Ws.1 and 2 were examined and Exs.A-1 to A-3 were marked and on behalf of the defendants D.Ws.1 to 3 were examined.

7. The trial Court after considering the entire material on record decreed the suit in favour of the plaintiff confirming the possession of the plaintiff over the suit schedule property, through the process of law vide proceedings in E.P.No.15/2003.

8. Being aggrieved by the same, the defendant No.1 has preferred an appeal before the VII Additional District Judge, Bodhan and on

hearing the arguments, the first appellate Court framed the following points for consideration:-

- “i. Whether the judgment of the trial court is sustainable in law?
- ii. To what relief?”

9. After considering the entire material on record, the first appellate Court dismissed the appeal without costs confirming the judgment and decree dated 23.04.2014 in O.S.No.25/2003 on the file of Junior Civil Judge, Bodhan. It is the specific finding of the first appellate Court that defendants did not adduce any documentary evidence except oral evidence to substantiate their claim and that they failed to file any pahani or patrika to show that they were in possession of the suit land at any point of time, prior to filing of suit or after filing of suit. Further, Ex.A-2 is the deposition of P.W2 in O.S.No.140/1985 and Ex.A.3 is the Pahani for the year, 1962-63 which shows the name of Abdul Razak in pattadar column and Abdul Raheman in possessor column against the suit schedule land which are taken into consideration by the first appellate Court.

10. Being aggrieved by the same, the unsuccessful defendant has filed the present Second Appeal raising the following substantial questions of law along with the Memorandum of grounds:-

- “A) Is the conclusion arrived at by the Courts below that the respondent/plaintiff’s suit is not barred by law of limitation is opposed to pith and substance of the Indian Limitation Act, 1963 in general and the spirit behind Articles 65 of the Limitation Act?
- B) Whether decree passed by the Court below can be sustained particularly when the courts below have failed to consider the effect of Written statement filed by plaintiff as Defendant No.3 in Ex.A-1 in view of Sections 3, 27 and Articles 65 of the Limitation Act.
- C) Whether as per Art.113 of Limitation Act, the time limitation started running from 1985 when the plaintiff had the admission knowledge about both agreement of sale and the possession of defendant over the suit property and right to sue accrues to the plaintiff ceased after three years from 1985 and present suit is barred by time?
- D) Whether both the Courts are right in holding that the defendant has not proved it

possession by open, peaceful, and uninterrupted for more than statutory period and further holding that defendant has not proved its adverse possession over the suit land by ignoring the written statement filed by the respondent-plaintiff in Ex.a-1 in the year, 1985 itself knowing of the open, peaceful possession and uninterrupted possession over the suit property of defendant can plaintiff maintain the present suit in view of Article 65 of Limitation Act.?

- E) Whether the suit can be filed for recovery of possession in 2003, by the plaintiff at age of 58 years after attaining majority in 1967? Whether such suit can be entertained against defendant whose possession is settled for a period of (36) years ignoring the provisions of Limitation Act?
- F) Whether in cases of adverse possession, in terms of Article 65, the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff, but it commences from the date when the defendant's possession became adverse. Therefore, in the present case, the starting point of limitation for adverse possession can be taken from the attaining

majority in 1967 or written statement filed in Ex.A-1 in the year, 1985?

- G) Whether in view of principles underlying Section 27 of Limitation Act, 1963 the plaintiff's right to the property in dispute must be held to have extinguished on the determination of the period of (12) years when the possession defendant became adverse to the plaintiff?
- H) Whether the cause of action for plaintiff arose from the date his appearance in O.S.No.140/1985 or by the date of judgment under Ex.A-1 or from the date of attainment of age of majority or whichever is earlier?
- I) Whether both possession of property and existence of agreement of sale of 1967 dealing with the transfer of the suit property would constitute a notice to the plaintiff under Section 3 of T.P.Act and Article 65 of the Schedule to the Limitation Act, 1963?
- J) Whether the conclusion arrived by courts below are perverse, contrary to evidence on record and against settled laws?
- K) Whether the alleged gift is acted upon and as the plaintiff-donee has maintained his position at any point of time over the suit

property? Whether the presentation of suit in the year is out of time?”

11. The Second Appeal is of the year, 2015 and it underwent numerous adjournments and is still coming up for admission.

12. Heard the learned counsel for the appellant. Perused the record.

13. A perusal of the substantial questions of law as raised in the Second Appeal would reveal that they all relate to fact findings of the Courts below and but not of law. It is relevant to mention that the trial Court as well as the appellate Court has given concurrent findings as to limitation and adverse possession.

14. It is pertinent to mention that there is limited scope under Section 100 of CPC while dealing with the appeals by the High Courts. In a Second Appeal, if the High Court is satisfied that the case involves a substantial question of law, only then, this Court can interfere with the orders of the Courts below. On perusal of the entire material on record, this Court is of the considered view that the orders of the Courts below are not perverse and there is no misreading of evidence, and therefore in the absence of substantial

question of law, it is not proper to interfere with the concurrent fact findings of the Courts below. Therefore, the Second Appeal deserves to be dismissed.

15. In the result, the Second Appeal is dismissed at the stage of admission confirming the judgment and decree dated 01.06.2015 in A.S.No.18 of 2014 on the file of VII Additional District Judge, Bodhan. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 16.11.2022
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