



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.49 OF 2015
WITH CA/1932/2015 IN SA/49/2015

1. Shaikh Ameen Shaikh Sahebu
Died through his L.Rs.
 - 1/1. Shaikh Sharifa Shaikh Allam,
 - 1/2. Shaikh Arifa Shaikh Naseer,
2. Shaikh Shanoorbee Shaikh Ameen,
3. Shaikh Hamid Shaikh Gani,
Died through his L.Rs.
 - 3/1. Muskan Shaikh Hamid,
 - 3/2. Asallam Shaikh Hamid,
 - 3/3. Najmee Shaikh Hamid,
 - 3/4. Nasreem Shaikh Hamid,
4. Shaikh Hasina Shaikh Hamid

All R/o. Patrud, Tq. Majalgaon,
District Beed

Versus

.. Appellants
(Original Defendants)

1. Shaikh Gani Shaikh Gulab
Died through his L.Rs.
 - 1/1. Shaikh Hamid Shaikh Gani,
 - 1/2. Shaikh Naser s/o. Shaikh Gani,
 - 1/3. Shaikh Abasbi w/o. Shaikh Mannan,
 - 1/4. Shaikh Bano s/o. Shaikh Mannan,
 - 1/5. Shaikh Shakila Shaikh Khudboddin,
 - 1/6. Shaikh Akhil w/o. Shaikh Jainu,
 - 1/7. Shaikh Tahera w/o. Shaikh Mahemood,
 - 1/8. Shaikh Tamijbee w/o. Shaikh Gani,

1/1 to 1/5 and 1/7 and 1/8 R/o.Patrud,
Tq. Majalgaon, Dist. Beed
1/6 R/o. Tirthpuri, Tq. Jalna, Dist.Jalna

.. Respondents
(Original Plaintiffs)

Mr. Bhagwan S. Kudale, Advocate for Appellants

CORAM : S. G. MEHARE, J.

DATE : 06-12-2023

PER COURT :-

1. Heard the learned counsel for the appellants/plaintiffs.
2. The second appeal is against two concurrent judgments and decrees.
3. The present appellant/defendants claimed that he was in possession of the suit plot in pursuance of the agreement to sell in 1972. It was not disputed that the landlord of the present appellant, who had delivered him the possession by the agreement to sell, had sold the suit plot to the plaintiff/respondent. Both Courts believed the case of the appellant that he was in permissive possession in view of the agreement to sell executed in 1972.
4. Learned counsel for the appellant submits that he was in long-standing possession for about 47 years. The decree of possession was to be passed. The plaintiff's suit was barred by limitation.
5. Learned counsel for the appellant also submits that the following substantial questions of law in this appeal have been involved;
 - (i) Could the decree for possession be passed against the person who was in permissive possession for 40 years?
 - (ii) Was notice under Section 106 of the Transfer of Property Act, 1882, required to be issued before filing the suit?

(iii) Whether the suit is barred by limitation?

6. The appellant himself had a case that he was in permissive possession of the suit land. Admittedly, he never filed a suit for specific performance of the contract against the vendor. He remained in possession. Thereafter, in 2004, the original landlord sold the suit plot to the plaintiff. The person in possession has a right to seek an injunction from the dispossession, provided he should have legal rights.

7. Section 54 of the Transfer of Property Act specifically provides that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not create any interest or charge on such property by itself. In view of this provision, only on the basis of the agreement to sell, no person can claim an interest has been created on such property.

8. So far as notice under Section 106 of the Transfer of Property Act, 1882 is concerned, it deals with the duration of certain leases in the absence of a written contract or local usage. If such a lease is to be determined, the landlord has to determine by issuing a notice under Section 106 of the Transfer of Property Act. The appellant had no case that he was possessing the plot under lease. Therefore, there is no question of issuing such notice under Section 106 of the Transfer of Property Act.

9. Merely having a long-standing possession also does not create any right unless the plea of adverse possession is pleaded and proved. The appellant himself had a case that he was in permissive possession of the original landlord. Such rights may be taken away at any time. The reasons assigned by both Courts on the point of limitation appear legal, proper and correct. No substantial question of law has been involved in this appeal. Hence, the appeal stands dismissed at the admission stage.

10. Pending civil application also stands disposed of.

(S. G. MEHARE)
JUDGE

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