

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 218 OF 2023

Madhavrao s/o Ramji Jagtap [Died]
through his L.Rs.

- 1] Bharatbai w/o. Madhavrao Jagtap,
Age 68 years, Occ. Agri. & H.H.
r/o. Walandi, Tq. Deoni, Dist. Latur.
- 2] Satish s/o. Madhavrao Jagtap,
Age 48 years, Occ. Agri.
r/o. Walandi, Tq. Deoni, Dist. Latur.
- 3] Sandeep s/o. Madhavrao Jagtap,
Age 43 years, Occ. Agri.
r/o. Walandi, Tq. Deoni, Dist. Latur
- 4] Vandabai w/o Rahul Patil,
Age 46 years, Occ. H.H.
r/o. Jajnoor, Tq. Nilanga, Dist. Latur.
- 5] Anuradha w/o Vijay Solunke,
Age 35 years, Occ. H.H.
r/o. Sonkhed, Tq. Nilanga,
Dist. Latur.

.. APPELLANTS
ORIG. DEFENDANTS

VERSUS

Umesh s/o Amrutrao Biradar,
Age 50 years, Occ. Agri & Business
r/o. Walandi, Tq. Deoni
Dist. Latur.

.. RESPONDENT
ORIG. PLAINTIFF

...
Mr.Rahul R. Deshmukh, Advocate for the appellant
Mr.B.M.Dhanure, Advocate for the respondent
...

CORAM : ARUN R. PEDNEKER, J.

Date : 08.08.2023

ORDER :

1] The present Second Appeal is filed challenging the judgment and order passed by the District Judge-1, Udgir in Regular Civil Appeal No.4/2020 dated 01.12.2022, thereby dismissing the appeal preferred by the appellants / defendants and confirming the judgment and decree passed by the Civil Judge Junior Division, Deoni in Regular Civil Suit No.368 of 2008 dated 26.11.2019, declaring the ownership of the suit premises in favour of the plaintiff and directing the defendant / appellant to vacate the suit premises.

Brief facts leading to filing the present Second Appeal can be summarized as under :

2] The respondent – plaintiff filed a suit for recovery of possession before the Civil Judge Junior

Division, Deoni consisting of Gram Panchayat House No.808 admesuring 33 x 11 feet. The plaintiff asserted in the suit that the suit plot was purchased by him from Jambuwantrao s/o. Girjappa Sonkawade on 18.08.1999 by a registered sale deed bearing DB No.191/1999. Consequently, the plaintiff's name came to be recorded in the village panchayat record. The plaintiff claims that he was in possession of the suit plot. Subsequent to the purchase of the suit plot, the plaintiff converted the said plot into non agriculture land by seeking permission from Tahsildar, Deoni dated 19.12.2001. Later, in the year 2003, the plaintiff applied to the village panchayat for permission to make construction. Accordingly, the village panchayat granted permission on 20.09.2003. However, before commencing the construction the defendants requested the plaintiff to permit him for residing in the suit plot for a period of six months, as it was nearby to his land. So, the plaintiff permitted him to reside in the suit plot on 01.10.2003. Even after six months, the defendants avoided handing over the possession of the suit plot for one or another reason. However, in the month of

November, 2007, the defendants refused to hand over possession of the suit plot to the plaintiff and thus suit for recovery of possession of the suit plot is filed.

3] In response to the suit summons, the defendants appeared and filed its written statement. The defendants denied the plaintiff's title over the suit plot. The defendants came with the case that the suit plot is a part of Survey No.89 admeasuring 02 Acre 36 R. belonging to the defendants. Out of the said land, the defendants sold 02 Acre 16 R. land to Gramin Shikshan Prasarak Mandal Education Society run by the Jambuwantao Sonkawade vide sale deed bearing No.73/1988. It was agreed between the defendants and Sonkawade at the time of execution of the sale deed that a plot admeasuring 33 x 33 feet from the said land should be allotted to the defendants, as the land sold to him was for a concessional price. Accordingly, Jambuwantao Sonkawade executed an agreement in favour of the defendants and handed over the possession of the suit plot to him. From that period the defendants are

enjoying the said plot as owner, therefore, they became the owner of the suit plot by adverse possession with the knowledge of the plaintiff and his predecessor in title.

4] It was further contended by the defendant that the sale deed executed by Jambuwantao Sonkawade in favour of the plaintiff was in his personal capacity and not as a Secretary of Gramin Shikshan Prasarak Mandal Education Society, therefore, the sale is illegal and void.

5] The trial Court on consideration of the pleadings formulated following issues along with findings :

Sr.No.	Issues	Findings
1.	Whether plaintiff prove his title on suit plot No.3 admeasuring 33 x 11 (Gram-panchayat No.808)?	In affirmative
2.	Whether plaintiff prove that, by oral permission he delivered the suit plot to defendant for temporary residence?	In affirmative
3.	Whether plaintiff prove that, defendant is avoiding to hand over the possession of suit plot ?	In affirmative
4.	Whether defendant prove that, the suit plot is allotted to him by Jambuwantao	In negative

	Sonkawade by way of agreement executed in 1988?	
5.	Whether defendant prove that, he has become an owner of suit plot by adverse possession ?	In negative
6.	Is plaintiff entitled to recover the possession of suit plot?	In affirmative
7.	What order and decree ?	As per final order.

6] The trial Court held that the plaintiff has proved his title over the suit plot No.3 admeasuring 33 x 11, Grampanchayat House No.808. It was further held by the trial Court that by oral permission the plaintiff permitted the defendant to reside on the suit plot. It was further held that there was no agreement between Jambuwantrao Sonkawade and the defendant and that on the issue of adverse possession, the same was also held against the defendant. The trial Court directed the defendant to hand over the possession of the suit plot i.e. grampanchayat House No.8080 to the plaintiff. The defendant challenged the judgment and order of the trial Court before the First Appellate Court.

7] The first Appellate Court formulated following issues for determination :

Sr.No.	Points	Findings
1.	Whether the plaintiff prove his title on suit plot No.3 admeasuring 33 x 11 (Gram Panchayat No.808)?	Yes
2.	Whether plaintiff prove that by oral permission he delivered the suit plot to defendant for temporary residence?	Yes
3.	Whether the plaintiff prove that defendant is avoiding to hand over the possession of suit plot?	Yes
4.	Whether defendant prove that the suit plot is allotted to him by Jambuwantao Sonakawade by way of agreement executed in 1988?	No.
5.	Whether defendant prove that he has become an owner of suit plot by adverse possession?	No
6.	Is plaintiff entitled to recover the possession of suit plot?	Yes
7.	Whether interference is called for in the impugned judgment?	No
8.	What order?	The appeal is dismissed.

8] The appellate Court also maintained the findings of the trial Court and confirmed the judgment and

order of the trial Court. The present Second Appeal is filed against the judgment and order of the Appellate court and the defendant has raised following substantial questions of law :

i] Whether the finding of the First Appellate Court is perverse as regards adverse possession as the Appellate Court held that the appellants – original defendants have not been able to establish adverse possession on account of the fact that the appellants – defendants have not pleaded starting date of possession which is required for adverse possession in view of pleadings in para no.13 of the written statement in which it is specifically pleaded that “as such from that day (i.e. 11.01.1988) the defendant is in possession of the property?”

ii] The learned counsel for the appellants – defendants submits that the land was sold by the appellants to the Shikshan Prasarak Mandal Education Society and the Secretary of the said society sold the land to the present appellants – defendants. Thus, there was no title transfer in

favour of the defendants, as such, the suit at the instance of the respondent – plaintiff was not maintainable as he had no title over the suit land.

9] As regards the second question of law that the sale deed in favour of plaintiff is void, the same cannot be questioned by the appellant. It is the defendant – appellant who was sold the suit plot to the society through the Secretary of the Society and the Secretary has sold the part of the suit plot to the plaintiff and as such the plaintiff has perfect title to the same. If there is a dispute as regards transfer of the title, the same would be available only to the society against the plaintiff. The present appellant – defendant cannot challenge the sale deed between Jambuwantao Sonkawade, Secretary of the society and the plaintiff. The defendant is put in possession of the suit land by the plaintiff and the defendant cannot question the title of the plaintiff.

10] As regards first question of law that the appellant is in adverse possession, the finding recorded by

the courts below is that the appellant was given permissive possession of the suit land. Mere permissive possession even for a long time does not become adverse. The Supreme Court in the case of **Chatti Konati Rao and others Vs. Palle Venkata Subba Rao** reported in [2010] 14 SCC 316 has discussed the law on adverse possession and at para nos.12, 13, 14 and 15 held as under :

12. In T.Anjanappa v. Somalingappa v. Somalingappa, it has been held that mere possession however long does not necessarily mean that it is adverse to the true owner and the classical requirement of acquisition of title by adverse possession is that such possessions are in denial of the true owner's title. Relevant passage of the aforesaid judgment reads as follows: (SCC p. 577, para 20)

"20. It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute

adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence the adverse possessor actually informing the real owner of the former's hostile action."

13. *What facts are required to prove adverse possession have succinctly been enunciated by this Court in Karnataka Board of Wakf v. Govt. of India. It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. SCC para 11 of the judgment which is relevant for the purpose reads as follows: (SCC p. 785)*

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina, Parsinni v. Sukh and D.N.Venkatarayappa v. State of Karnataka.) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to

the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. (Mahesh Chand Sharma v. Raj Kumari Sharma)"

14. *In view of the several authorities of this Court, few whereof have been referred above, what can safely be said is that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession*

must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within twelve years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of twelve years thereafter.

15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and,

hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law.

11] In the instant case, the Court having held that the appellant was in permissive possession and that he refused to hand over the possession to the plaintiff before filing of the suit and thus the suit was within limitation. Mere possession for more than 12 years does not make the possession of the defendant adverse. Permissive and adverse possession are inconsistent with each other. Thus, no question of law arise as regards the adverse possession. The contention of the appellant that in the written statement, he has contended that he is in possession of the suit property from 11.01.1988, does not make the possession adverse and the Appellate Court has held that the possession of the defendant over the suit premises is permissive.

12] In view of the same, no substantial questions of law arise for consideration in the present Second Appeal. Therefore, the present Second Appeal is dismissed.

13] In view of dismissal of Second Appeal, Civil Application No.6786 of 2023 does not survive and the same stands disposed of.

[ARUN R. PEDNEKER]
JUDGE

DDC