



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

SECOND APPEAL NO. 606 OF 2022

- 1) Chandrasingh Mansing Banjara  
Age ; 43 years, Occ; Agriculture,  
R/o; Maindane, Tq. Sakari, Dist. Dhule.
- 2) Mangaldas Mansing Banjara,  
Age; 41 years, Occ; Agriculture,  
R/o; Same as above.
- 3) Shevantabai Mansing Banjara,  
Age; 68 years, Occ; Agriculture,  
R/o; Same as above.

...APPELLANTS  
(Orig. Pltffs.)

VERSUS

Bhatu Gopal Wani,  
Since died, through L.Rs....

- 1) Prabhakar Bhatu Wani,  
Age; 57 Years, Occ; Agriculture,
- 2) Devidas Bhatu Wani,  
Age; 55 Years, Occ. Agriculture,
- 3) Shantaram Bhatu Wani,  
Age; 53 years, Occ; Agriculture,
- 4) Narayan Bhatu Wani,  
Age; 51 years, Occ; Agriculture,
- 5) Ravindra Bhatu Wani,  
Age; 49 years, Occ; Agriculture,

All R/o; Pimpalner, Tq. Sakri,  
District; Dhule.

- 6) Manik Gobaji Desale,  
Age; 50 years, Occ; Agriculture,
- 7) Vishwas Gobaji Patil,  
Age; 52 years, Occ; Agriculture,
- 8) Shobhabai Manik Desale,  
Age; 45 years, Occ; Agriculture,
- 9) Sushilabai Vishwas Patil,  
Age; 50 years, Occ; Agriculture,

All R/o; Maindane, Tq Sakri,  
District; Dhule.

**...RESPONDENTS.  
(Orig. Defts.)**

Advocate for the Appellants : Mr. A.S. Abhyankar  
Advocate for the Respondent Nos. 1 to 9 : Mr. Mukul S. Kulkarni

**CORAM : KISHORE C. SANT, J.**

**Date of Reservation : 29.09.2023**

**Date of Pronouncement : 01.12.2023**

**JUDGMENT :**

1. This Second Appeal is by the Original Plaintiffs, challenging concurrent judgment, by which, the suit came to be dismissed against the present Respondents/Original Defendants.

2. The suit was filed by the plaintiffs seeking possession of land Gut No. 84 (Survey No. 70) ad-measuring 18 Acres 36 Are (hereinafter referred to as the "Suit Property"). It is their case that the father of the plaintiff Nos. 1 and 2 and the husband of plaintiff No. 3 were the owners of the suit property. He was in need of Rs.4000/- to Rs.5,000/- to repay the loan amount. He, therefore, approached one Bhatu Gopal Wani, the father of defendant Nos. 1 to 5 & took hand loan. The name of said Bhatu Wani was mutated in the record of rights. Mansingh being illiterate, he could not notice that the sale deed is shown to have been effected. The said amount of loan was repaid subsequently, however, the entries were not reversed. Mansingh died in 1992. Thereafter a suit was filed in the year 2014 seeking possession, being owners of the suit property, on the basis of title and for mesne profit.

3. The case of defendant Nos. 6 to 9 is that they became owner by adverse possession. It is their defence that the suit is barred by the limitation, in view of Article 64 of the Limitation Act as the suit is based on the title. Admittedly the suit land is in possession of defendant Nos. 1 to 5 since 1966-67, & since 1989 in possession of defendant Nos. 6 to 9 the suit is filed in the year

2014.

4. The learned trial Court has dismissed the suit holding that the suit was not within the limitation. It is also held that the plaintiffs could not prove that the suit property was ancestral property of Mansingh and that Mansingh had raised loan from Bhatu Wani and shown the transaction as a sale transaction. The trial Court held that the plaintiffs have proved that the transaction between Mansingh and Bhatu was null and void in absence of registered sale deed & since it executed without permission to sell from the authorities. The Court also held that the plaintiffs have proved that they are the owners of the suit property. The suit is dismissed holding that the suit is not within the limitation and the plaintiffs are not entitled to recover the possession.

5. The learned Advocate Mr. Abhyankar, for the appellants argued that, the learned trial Court mainly considered the pleadings, that there are no averments as regards the mortgage. It is only in the course of deposition plaintiff No. 2 who deposed that there was a transaction of mortgage. However, it is observed that the plaintiffs could not give details as to when the amount of mortgage was repaid but the said mortgage is not proved. The

Court did not accept the theory of adverse possession stating therein that in the year 1967-68, it is deceased Mansingh, who himself put the defendants in possession and it was Mansingh, who applied for mutation of entry in their favour. It is further observed that it is accepted that Mansingh was the owner of suit property and thus, once accepting that they are put in possession by Mansingh, he submits, they cannot raise a plea of adverse possession. The learned CJJD, Sakri dismissed the suit bearing RCS No. 29 of 2014.

6. The plaintiff, therefore preferred an appeal bearing RCA No. 48 of 2019. The learned appellate Court also held that the suit was not maintainable and the same was not within the limitation. It is also held that defendants have raised plea of sale transaction as legal. It is held that the plea of adverse possession does not survive. About entitlement of the plaintiffs to seek possession the Court answered point in negative and dismissed the appeal.

7. Before this Court it is tried to argue that the suit was based on previous title. The defendants failed to prove plea of adverse possession. The suit was within limitation as the cause of

action arose from time to time when the suit is based on previous title and possession. In this case the defendants have not disputed the previous possession and title of Mansingh. The plaintiffs are the legal heirs of Mansingh and therefore, they have become the owners of the suit property.

8. The learned Advocate Mr. Kulkarni for the respondents vehemently opposed the appeal. He submits that in the entire plaint there is no pleadings stating that the suit is on the basis of previous possession. The prayer shows that the suit is based on title. The defendant Nos. 1 to 5 have sold the land of defendant Nos. 6 and 7 on 07.07.1989 by executing a sale deed. In the suit there is no prayer to set aside the sale deed of the year 1989. Thus, in absence of challenge to sale deed the suit was not maintainable. The plaintiffs have not stated anything about the sale deeds. There is no obstruction by anyone including the plaintiffs to the possession of the defendants since 1967-68 and thereafter since 1989 even after the sale deed is executed in favour of defendant Nos. 6 and 9. The father of the plaintiffs died in the year 1992. The suit is not filed within a period of 12 years even thereafter. In any case, there was nothing to show that the suit is not maintainable

which was filed in the year 2014. He submitted that the plaintiffs cannot seek possession without pleadings. It is seen from the averments in the plaint that the plaintiff is aware of the transfer of land from defendant Nos. 1 to 5 in favour of defendant Nos. 6 to 9. Though it is stated that the plaintiffs got knowledge for the first time in the year 2013, the same cannot be believed and prayed for rejection of the appeal.

9. In rebuttal, the learned Advocate for the appellants submits that there is no privity of contract between the plaintiff and defendant Nos. 6 to 9 and therefore, there is no need to get declaration for the sale deed in their favour. Defendant Nos. 1 to 5 will not get title as there is no registered sale deed in their favour. Article 64 of the Limitation Act is reads as under :

| Description of Suit                                                                                                                                                   | Period of Limitation | Time from which period begins to run |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------------|
| 64) For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed. | Twelve Years.        | The date of dispossession.           |

10. Article 64 provides that the limitation is of 12 years for filing a suit based on previous possession and not on title. In case

of adverse possession, also the limitation is of 12 years as per Article 65 of the Limitation Act. In this case, both the Courts have not accepted the case of adverse possession. The case thus is governed by Article 64 of the Limitation Act. As per record, admittedly it has come in the evidence that Mansingh had given possession to Bhatu in the year 1967-68 and there are revenue entries showing possession of defendant Nos. 1 to 5. In 1989 the land is transferred to defendant Nos. 6 to 9. Considering the dates of filing of the suit, the suit is not within 12 years in any of the events. It is not within 12 years even after the death of Mansingh.

11. The learned Advocate for the appellants relied upon the judgment reported in **2020 Supp. SAR (Civ) 991** in the case of **Narasamma & Ors. Vs. A. Krishnappa (D) through LRS**. The Hon'ble Apex Court has held that the defendants cannot take a plea of adverse possession, simultaneously with the plea of title. This Court finds that there is no dispute about the same. In this case both the Courts have not accepted the plea of adverse possession and therefore, this judgment is not applicable to the facts of this case. He further relied upon the judgment reported in **2011 (2) AIR Bom. 196** **Khandu Shankar Chaudhari & Ors. Vs. Yeshwant**

Dhaku Khatri & Ors. This case law is about the applicability of Article 64 of the Limitation Act. Article 64 is already considered in this case by both the Courts below. The next judgment is of **2008 (2) Mh.L.J. 633** in the case of Attaur Raheman Fateh Mohmmad Vs. Hari Peeraji Burud died through Lrs. Neelabai @ Chandrakala Haribhau and Others. It is held that a person who does not hold transferable interest in the property cannot transfer the property. He further relied on **(1995) 6 SCC 309** in the case of R. Chandavarappa and Others Vs. State of Karnataka and Others, the Hon'ble Court has considered Article 65 of the Limitation Act and the adverse possession. This judgment is also not applicable to the facts of this case. He further relied on **2010 (6) Mh.L.J. 407** in the case of Vinay s/o Ambadas Kaikini and another Vs. Court Receiver, of this Court at Bombay. In that case it is held that the suit is for eviction of trespasser, it is held that the trespasser do not have any right, title and interest in the suit premises. The trespass continued so long as the unlawful entry lasts.

12. In the present case the suit itself is filed on the basis of previous possession and therefore, in view of Article 64, both the Courts have rightly held against the plaintiffs on the point of

limitation. The reliance is also placed on **(1997) 7 SCC 567** in the case of D.N.Venkatarayappa and another vs. State of Karnataka and others. This case law is also not useful to the appellants in this case. He also relied upon the judgment in **AIR 1999 SC 1549** in the case of Indra vs. Arumugam and another. It was suit for possession based on title. In that case the second appeal was dismissed by the High Court by holding that the plaintiff cannot be non suited unless the evidence to prove adverse possession for prescriptive period. In that case it was admittedly a suit filed within a period of 12 years thus, this judgment is also not applicable. He further relied on the judgment in **AIR 1966 SC 735** in the case of Bhagwati Prasad v. Chandramaul. This Court finds that the ratio of the said case law is also not applicable to the facts of this case.

13. The learned Advocate for the respondents placed reliance on the judgment in **AIR 2019 SC 813** in the case of Poona Ram Vs. Moti Ram (D) th. Lrs. and Ors. The Hon'ble Apex Court in the said case held that the person who asserted possessory title has to show that he is in settled and peaceful possession of the property. It is held that the settled possession must the possession

over the property which existed for sufficiently long period of time. In that case the suit was filed for declaration of title and for possession. The plaintiff had no document of title to prove his possession who claimed possessory title on the basis of prior possession. It is held that the plaintiff has to prove his case to the satisfaction of the Court. The plaintiff cannot succeed on the weakness of the defendants. This Court finds that this ratio in this case is applicable to the facts of the present case. Merely because the Courts have not accepted the theory of adverse possession of the defendants will not automatically give right to the plaintiffs to get the possession. It was necessary for the plaintiffs to prove his own case. He further relied upon the judgment reported in **AIR Online 2023 Bom. 1665** Shiocharan Shankarrao Sadafale Vs. Arun Sadashiorao Sadafale. In the said case though recovery of possession and damages were claimed by the plaintiffs, no relief of declaration, the sale deed being null and void was made. On that count it was held that the suit was not maintainable. This Court finds sufficient force in the submission of respondents on the strength of this judgment. In the case of **2003 DGLS (SC) 1059** - Rame Gowda (D) by Lrs. Vs. M. Varadappa Naidu (D) by Lrs. The Hon'ble Apex Court has held that if trespasser is in settled

possession of property belonging to the rightful owner, the rightful owner shall have to take recourse to law even against a trespasser. The long settled possession is itself is the evidence of title. Thus, the plaintiff has to prove his title over the suit property. This Court, thus, finds that the said case law is applicable to the present facts of the case.

14. Considering all above, this Court does not find any perversity in the judgments passed by the Courts below. There is no merit in the appeal. No substantial question of law is involved in this Second Appeal and the same is therefore, dismissed.

**( KISHORE C. SANT )  
JUDGE**

mahajansb/