

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

SECOND APPEAL NO. 713 OF 2022

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| 1) The Chief Executive Officer,
Zilla Parishad, Parbhani | |
| 2) The Gramsevak (V.D.O.)
Grampanchyat Rampuri (Bk.),
Tq. Manwath, District Parbhani. | ...APPELLANTS
(Orig. Deft. Nos. 2
& 3) |

V E R S U S

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| 1) Shrimantrao S/o Tukaram Yadav
Age; 84 years, Occ; Agri,
R/o; Rampuri (Bk.), Tq. Manwath
District; Parbhani. | |
| 2) Tulsidas S/o Tukaramji Yadav
Age; 79 years, Occ; Agri,
R/o; Rampuri (Bk.), Tq. Manwath,
District; Parbhani. | |
| 3) The State of Maharashtra,
Through Collector, Parbhani. | |
| 4) The Chairman,
Vividh Karyakari Sahakari Society,
Rampuri (Bk.), Tq. Manwath,
District; Parbhani. | ...RESPONDENTS
(R. No. 1 & 2 -
Orig. Plaintiffs &
R. Nos. 3 & 4 -
Orig. Deft. Nos. 1
& 4) |

...
Advocate for the Appellants : Mr.B.A. Shinde
Advocate for Respondent Nos. 1 & 2 : Mr.Swapnil S. Rath
A.G.P. for the Respondent No. 3 : Mr. S.P. Tiwari
...

CORAM : KISHORE C. SANT, J.

DATE : 01.09.2023

ORAL JUDGMENT :

1. Heard the parties at length.
2. Being aggrieved by the judgment and order passed by the learned Additional District Judge, Parbhani in RCA No. 13 of 2017 the appellants have filed this Second Appeal. The learned Appellate Judge by way of impugned judgment has dismissed the appeal with costs. The appeal was filed challenging the decree passed by the learned C.J.S.D., Gangakhed, dated 15.01.2016 in RCS No. 124 of 2013.
3. The respondent Nos. 1 and 2 had filed a suit against the present appellant Zilla Parishad and respondent Nos. 3 and 4, who are the Grampanchyat, Gram Sevak and the Chairman of the Vividh Karyakari Sahakari Society, Rampuri (Bk.), Tq.Manwath, District; Parbhani (for short "VKS Society"). Respondent No. 3 is the State of Maharashtra, through the Collector. The suit was filed claiming recovery of possession of land, perpetual injunction and in alternative for

direction to the defendants to initiate the acquisition proceedings in respect of suit land Gut No. 1, ad-measuring 1 H, 02 R of Village Rampuri (Bk.), Tq. Manwath, Tq. Parbhani. (Hereinafter the parties are referred as per their original status in the suit.)

4. The plaintiffs have filed a suit on the basis of title to the suit land. It is the case of the plaintiffs that in the year 1964-65 the defendant, Zilla Parishad, took possession of the land for construction of a dispensary and for a Primary Health Center and also for constructing quarters to its employees, Grampanchyat Office, Society Office and also for Godown. It was assured that the Zilla Parishad would start the acquisition proceedings and the compensation would be paid to the plaintiffs. However, inspite of various demands and attempts, no acquisition proceeding was started therefore ultimately a notice was issued to handover the possession. Since, no heed was paid to the said notice, the plaintiffs were constrained to file the suit.

5. It is the case of defendant Nos. 2 and 3 that the land was purchased for an amount of Rs. 914/- in the year 1966. There are entries in the Revenue Record showing the

names of Grampanchyat, Zilla Parishad and defendant No. 4 i.e. the VKS Society. The entries appeared in the 7/12 extract as well as in the City Survey record. The names of the plaintiffs, however, does appear in 7/12 extract as the owner and possessor of the suit land. The plaintiffs had also issued notices under Section 18 of the Act to the defendants on 2.12.2009. Lastly, a request was made on 25.03.2013 for vacating the suit land and to initiate acquisition proceedings. The defendants have denied even the title of the plaintiffs over the suit land.

6. The learned trial Court framed issues about the title and status of the construction by defendant Nos. 2 to 4 over the suit land, which are as below :

(a) Whether defendant No. 3 has proved that the land is purchased from plaintiffs, i.e. from the father of the plaintiffs namely Tukaram Yadav ?

(b) Whether the defendants were handed over the possession for construction of Primary Health Center in 1970 ?

(c) Whether the suit is within the limitation ?

(d) Whether the suit is not maintainable for want previous notice under Section 180 of the Bombay Village Panchyat Act and Section 280 of the Maharashtra Zilla Parishad and Panchyat Samities Act, etc.?

7. The parties have laid the evidence in their support.

8. The plaintiffs have relied upon the documents i.e. 'Sanad' issued by DILR, a copy of notice issued to the respondents, a copy of postal receipt, a copy of acknowledgment of the receipt of notice by the defendants, 7/12 extract of the land Gut No. 1 and a copy of map of Gut No. 1, issued by the Office of DILR.

9. The defendant Zilla Parishad has relied upon the revenue entries showing the possession of the Zilla Parishad as owner of the land.

10. The learned trial Judge after going through the evidence and after considering the legal position was pleased to decree the suit with costs and directed the defendant Nos. 2 to 4 to hand over the vacant possession of the suit land to the plaintiffs within three months and further granted permanent injunction. In appeal the learned District Judge confirmed the said decree.

11. In support of the appeal, the learned Advocate for the appellants vehemently argued that the possession of

defendants is long standing and there is no dispute about the same. Various revenue entries show the names of defendants in the property. There is evidence to show that the consideration of Rs. 914/- was paid to the father of the plaintiffs. The Courts below have failed to appreciate the said evidence. It is further submitted that in view of Section 27 of the Limitation Act and in view of Article 64 of the said Act, the suit was barred by limitation. No prior notice was issued to the defendants before filing of the suit as required under Section 180 of the Bombay Village Panchyat Act and Section 280 of the Zilla Parishad and Panchayat Samiti's Act. He further argued that the suit was not maintainable on the ground of limitation as well as looking to the prayers in the suit. In the suit the prayer is for perpetual injunction. He submits that when the possession of the defendants is admitted, the prayer clauses ought to have been for mandatory injunction since there is already construction standing in the suit land. He submits that thus, the question of law is involved in this appeal and the appeal needs to be admitted. He relied upon the judgments reported in **2005(1) Mh.L.J. 899** - Tej Narain and another vs. Shanti Swaroop Bohre and another.

12. Mr. Rathi, the learned Advocate for respondent Nos. 1 & 2 submits that no substantial question of law is invoked. He opposes the admission of the appeal. He submits that the suit was for recovery of possession. No title is ever passed on to the defendants. There is no document to show that the ownership rights over the land have ever been transferred in favour of the defendants. The possession of the Zilla Parishad and other defendants was therefore, only permissive possession. There is no sale deed executed between the parties. The revenue entries would not confer the title of the defendants over the suit land. To claim the adverse possession the possession must be hostile possession. There are no pleadings of adverse possession. He submits that Article 64 of the Limitation Act is not applicable in the present case, as the suit is based upon the title. Article 64 of the Limitation Act can be invoked only when the suit is not based upon title and based only on previous possession. He invited attention of this Court to Section 54 of the Transfer of Property Act to submit that the title can be passed only by way of executing a registered instrument. In this case no any instrument is admittedly on record. Merely because some

entries are found of payment to the owner of the land is not sufficient to prove the transfer of title. By reading Section 180 of the Bombay Village Panchyat Act and Section 280 of the Maharashtra Zilla Parishad and Panchyat Samities Act, he submits that a notice is required only in respect of the acts done by the said bodies under the Act. Taking possession of the land in such manner can in no case be said to be an act done under the Act and therefore, no previous notice is required to be given. He relied upon the following judgments :

(a) **2010(2) Mh.L.J. 718** - Ganpartro s/o ramji Nagul and another vs. Dattatraya Guru Daulatgiri Maharaj.

(b) **2011(4) Mh.L.J. 818** - Khandu Shankar Chaudhari (through since died his L.Rs.) vs. Yeshwant Dhaku Khatri and others.

(c) **2007(5) Mh.L.J. 136** – Gangaram Sakharam Dhuri, Since deceased through L.R. Vishnu and others vs. Gangubai Raghunath Ayare and others.

13. On hearing all the submissions and after going through the record as well as the judgments of both the sides, this Court has to see whether any substantial question of law is made out, so as to admit the Second Appeal. So far as, the submissions of the appellants are concerned, that the appellant are the owner, the learned Advocate relied upon the

entries in the revenue record. Except the revenue record and the account books that certain entries are found of payment of amount to the plaintiffs for so called purchase of the land and no other document is on record. However, there is no document which can be termed to be instrument or conveyance deed creating any right in favour of the defendants. Both the Courts on this aspect have rightly held that the defendants could not prove their title over the suit land.

14. So far as Section 27 of the Limitation Act is concerned, this Court finds that no case is made out to invoke the said Section.

15. The next reliance is placed on Article 64 of the Limitation Act. Article 64 reads as under :

“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.”

Thus, the period limitation provided is of 12 years, in the case if the possession is sought, is based upon previous possession and not on title. In this case, the possession is not sought on the basis of previous possession but it sought on

title. So far as Article 65 of the Limitation Act is concerned, it prescribes limitation of 12 years. However, in the said Article the period begins to run from the date when the possession of the defendants becomes adverse or hostile to the plaintiffs. Thus, the present case does not fall even under Article 65 of the Limitation Act, as there is no case of adverse possession. On the contrary, it is the case of the defendants that they were permitted to raise construction by the father of the plaintiffs. There is no case that any time in the past the defendants asserted their ownership so as to call the possession as hostile one. This Court finds that there is substance in the submissions of learned Advocate Mr. Rathie that no case of adverse possession is made out.

16. As regards the notice under Section 180 of the Bombay Village Panchayat Act or Section 280 of the Zilla Parishad and Panchayat Samaities Act, the wording of Section 180 is as under :

***“180. Bar of action against Panchayats etc. and previous notice before institution. - (1) No action shall lie against any member, officer, servant or agent of Panchayat [* * * *] acting under its direction, in respect of anything in good faith done under this Act or any rule or bye-law.
(2) no action shall be brought against any***

Panchayat [* * *] or any member, officer, servant or agent or such Panchayat [* * * *] acting under its direction for anything done or purporting to have done by or under this Act, until the expiration of three months next after notice in writing has been left or delivered at the office or the Panchayat [* *] and also at the residence of the member, officer, servant or agent thereof against whom the action is intended to be brought. The notice shall state the cause of action, the nature or the relief sought, the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.*

(3) Every such action shall be commenced within six months after the accrual of the cause of action, and not afterwards.

(4) If any Panchayat [* * *] or person to whom a notice under sub-section (2) is given shall, before action is brought, tender sufficient amends to the plaintiff and pay into Court, the amount so tendered, the plaintiff shall not recover more than the amount so tendered. The plaintiff shall also pay all cost, incurred by the defendant after such tender.”*

From the wording of Section 180 (2) it is clear that such notice is required before the institution of the suit only in cases where action is brought for the Act while acting under anything done or purporting to have done by or under the said Act.

17. Similar is the case under Section 280 of the Maharashtra Zilla Parishad and Panchyat Samities Act, which reads as under :

“(1) No suit shall be commenced against any Zilla Parishad or against any officer or servant of, or working under, a Zilla Parishad or any person acting under the orders of a Zilla Parishad or Panchayat Samiti for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Zilla Parishad officer, servant, or person one month’s previous notice in writing of the intended suit nor after three months from the date of the act complained of. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name of place of abode of the person who intends to bring the action.

(2) In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender.”

From the reading of this Section 280 again it is clear that a notice is required to be given if the action is to be taken for the act for anything done or purported to have been done in pursuance of the said entries. This Court thus, finds that no case is made out of violation of these two Sections as well. The learned Advocate for the appellants relied upon the judgment in the case of **Tej Narain** (supra). It was the case of adverse possession. In that case the suit for declaration of title and possession was sought after 12 years. It was found that the plaintiffs were not in possession of the suit house

since 10.07.1928 and the suit was filed in the year 1955. In that case the question of adverse possession was considered. In this case, no question of adverse possession is made out and thus, therefore, the above stated case law is not applicable to the case in hand.

18. In the case of **Ganpat** (supra) relied upon by the defendants, this Court has held that the instrument of gift of the immovable property is required to be compulsorily registered under Section 123 of the Transfer Property Act as well as Section 49 of the Act. Thus, it is clear that the title would pass only by way of an instrument. In this case admittedly there is no any sale deed executed in favour of the defendants. Thus, in no case the defendants can be said to have acquired the title over the property. In the said case the Court has also considered Article 65 of the Limitation Act. It is held that mere continuance in possession for a period of more than 12 years in itself is not sufficient to hold that the defendants have perfected their title. In this case there is no instrument is executed giving title to the defendants, the possession of the defendants though it continues, is not hostile one.

19. So far as the judgment in the case of **Khandu** (supra) is concerned, this Court considered article 64 of the Limitation Act. It was held that the suit for possession on the basis of title was not barred by the limitation. The question of dis-possession, as held, applies when a person comes in and drives out another from possession. In the present case there is no forcible dis-possession on the contrary it is an admitted case that with the permission of the father of the plaintiffs the construction of the building was made by the defendants. So far as the judgment in the case of **Gangaram** (supra) is concerned, this Court has considered the provisions of Section 17 of the Limitation Act. There being an instrument of relinquishment deed. This Court by considering the various judgments held that the deed of relinquishment of immovable property having value of more than Rs. 100/- is compulsory registerable. In that case there were entries in the revenue record, however, this Court held that mere entries in the revenue record would not affect the relinquishment deed.

20. Thus, considering all these judgments and the submissions in the light of the pleadings of the parties, this

Court finds that there is no any illegality committed by any of the Courts. This Court finds that no case of any substantial question of law is made out. Thus, the Second Appeal deserves to be dismissed and the same is hereby dismissed with costs.

(KISHORE C. SANT)
JUDGE

mahajansb/