

SA Pathan

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.691 OF 2023

**WITH
INTERIM APPLICATION NO.17596 OF 2023
IN
SECOND APPEAL NO.691 OF 2023**

Saipan Mahiboob Shaikh

Appellant/
... Applicant

V/s.

Solapur Municipal Corporation
Through Its Commissioner & Anr

... Respondents

Mr. Valmiky Narvekar a/w Mr. M. S. Mulla, for
Appellant/Applicant.

Mr. Hrishikesh S. Shinde, for Respondent.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 14, 2023

P.C.:

1. The appellant is the original plaintiff who filed Regular Civil Suit No.63 of 2015 seeking a declaration that he be declared as owner of the suit property and further direction against defendant Nos.1 and 2/Municipal Corporation to enter plaintiff's name in revenue record. Also, injunction restraining defendant No.3 from

disturbing possession of plaintiff over the suit property is sought.

2. According to the plaintiff, he purchased suit property in the name of defendant No.3 as ostensible owner. Defendant No.3 executed an agreement of possession in plaintiff's favour by accepting Rs.2 lakh. However, no sale deed was executed in plaintiff's favour.

3. Defendant Nos.1 and 2 did not contest the suit by filing the written statement. However, defendant No.3 contested the suit by filing the written statement. According to defendant No.3, he is owner of suit property by virtue of the sale deed dated 3 July 1998 for a consideration of Rs.69,000/-. On 16 January 2015, defendant No.3 filed a counter claim seeking possession of suit property from the plaintiff.

4. The Trial Court framed necessary issues casting burden on the plaintiff to prove his title over the suit property. The issue relating to prohibition under the Prohibition of Benami Property Transaction Act, 1988 also framed by the Trial Court. The Trial Court also framed the issue as to whether defendants were entitled possession and recovery of suit property by way of counter claim.

5. The Trial Court dismissed the suit and decreed the counter claim. Plaintiff's appeal against dismissal of suit and decree in counter claim has been dismissed by the Appellate Court.

6. Therefore, the plaintiff has filed the present second appeal.

7. According to the learned Advocate for the appellant, the plaintiff is in possession of the suit property since 1998, and

therefore, counter claim for possession over the suit filed in the year 2015, is barred by law of limitation. According to him, the plaintiff purchased suit property in the name of defendant No.3 as defendant No.3 is plaintiff's brother-in-law. By virtue of agreement and after accepting Rs.2 lakh, the plaintiff was put in possession of the suit property. However, no sale deed was executed in plaintiff's favour by defendant No.3.

8. In so far as, the contention of the plaintiff that the suit is barred by limitation, it needs to be noted that the suit for possession on title is governed by Article 65 of the Limitation Act, 1963. The starting point of suit for possession based on title, is from the possession becomes adverse. No evidence is placed on record by the defendant to show when possession of plaintiff became adverse. Therefore, suit for possession based on title, in the facts of the case, cannot be said to be barred by limitation.

9. In so far as, plea of plaintiff that he purchased the suit property in the name of defendant No.3 is concerned, such plea is barred under Section 3(1) of The Prohibition of Benami Property Transaction Act, 1988.

10. Once, defendant No.3 proves that he is owner of the suit property, the Trial Court has rightly decreed counter claim of defendant No.3 directing plaintiff to hand over possession of the suit property. No substantial question of law is involved in this appeal.

11. The second appeal is dismissed.

12. In view of dismissal of second appeal, nothing survives in the interim application. Hence, the interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)