

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

WRIT PETITION NO.2792 OF 2023

Ramdas Harishchandra Raje & Ors. Petitioners

versus

Baban Maruti Kumbhar Respondent

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- Mr. Nikhil Wadikar a/w Faiza Shaikhk a/w Malhar Pawar,
Advocate for Petitioner.

CORAM : SARANG V. KOTWAL, J.

DATE : 09th MARCH, 2023

P.C. :

1. Heard Mr. Nikhil Wadikar, learned counsel for the
Petitioners.

2. The Petitioners are the Original Defendants and the
Respondent is the Original Plaintiff in Regular Civil Suit
No.47/2005 in the Court of Civil Judge, Senior Division, Satara.
Subsequently, it was transferred to the Court of Civil Judge,
Junior Division, Satara. For the sake of convenience, the parties
are referred to by their original status in the suit.

3. The Plaintiff had filed a suit for redemption of mortgage and possession of the property from the Defendants. It was his case that the Plaintiff was the owner of the land in village Atit, Taluka & District Satara bearing Gat No.863. Out of the property, the portion described in the first paragraph of the plaint was the suit property. On 05/01/1983, vide a registered mortgage deed, the Plaintiff had mortgaged his land for an amount of Rs.4,000/-. According to the agreement, the Plaintiff could repay the amount of Rs.4,000/- and could regain the mortgaged land. It is alleged that, in November 1987, the Plaintiff repaid Rs.4,000/-. The predecessor Sadashiv of Defendants had returned the mortgage deed to the Plaintiff. On 16/10/1991 Sadashiv passed away. After that, the deed for redemption had remained to be executed. According to the Plaintiff, the possession of the land was already given to the Plaintiff in November 1987, when he had repaid Rs.4,000/-. It is his case that in the year 2003, the land admeasuring 3 R from the suit property was acquired for the National Highway-4. The

Government had declared the award of Rs.19,274/-. It is the case of the Plaintiff that the successors in the title of the deceased Sadashiv i.e. the present Petitioners (Defendant Nos.1 and 2) fraudulently entered their names in the revenue record. They also made some false complaint and therefore in December 2003 acquired possession on the suit premises with the help of the police. The plaintiff issued a notice through his advocate on 16/11/2004 and demanded possession of the land. However, it was not returned and therefore this suit was filed.

4. The Petitioners herein i.e. the Original Defendants filed their written statement. In that written statement it was denied that possession of the land was given to the Plaintiff in November 1987 on payment of Rs.4,000/-. Most of the averments in the plaint were denied. It was the specific case of the Defendants that since 1983 the suit property was in possession of the Defendants.

5. The suit was conducted and finally it was decreed in

favour of the Plaintiff. As per the judgment dated 18/02/2020, the decree was passed. It was decreed that the suit property i.e. Gat No.863 admeasuring 1H 65R to the extent of half share on eastern side on payment of Rs.4,000/- with interest on 6% per annum from the date of decree till the date of payment of the said amount in the Court within one month; the Plaintiff was entitled to get the suit property. The Defendants were directed to execute the re-conveyance deed in favour of the Plaintiff.

6. This order was challenged by the Defendants in the Court of District Judge, Satara, vide Regular Civil Appeal No.47/2020. During pendency of this Appeal, the Defendants i.e. the present Petitioners had preferred Ex.123 for amendment to their written statement. The said application was made vide Ex.22 in the Appeal. It was rejected by the Appellate Court vide order dated 06/10/2022.

7. Learned counsel for the Petitioners submitted that the Defendants were in adverse possession from November 1987

and therefore since the suit was not filed within 12 years, the suit for possession was time barred.

8. According to learned counsel for Petitioners, the learned Appellate Judge did not consider the necessity of the amendment in proper perspective and he had wrongly rejected the said application. The said order dated 06/10/2022 is under challenge in this Writ Petition.

9. I have considered submissions made by learned counsel for the Petitioners. The amendment which is sought by the Petitioners is as follows:

“in alternative as plaintiff prayed that they repaid the mortgage amount of Rs.4,000/- in November 1987 and took the possession of the suit property and defendant returned the original Mortgage-deed to plaintiff, accordingly the possession of the defendant in suit property from Nov. 1987 is adverse. Hence, as plaintiff

has not filed suit within 12 yrs., suit for possession is timebarred. ”

10. Learned Appellate Court held that there was no reason mentioned about the necessity of this pleadings at this stage. The defence was available to the Defendants at the time of filing their written statement, but they did not take up this defence. Thereafter the decree was passed and this application for amendment was made after six years. Thus it was filed with malafide intention to protract the proceedings. It was further observed that the amendment application was filed after more than two years of filing of that Appeal. Even in the grounds of the Appeal, no such objection was raised for amendment. It was further observed that pleadings of the plaintiff in the suit were clear and unambiguous about which the Defendant was having knowledge since beginning. Therefore, the pleadings which were inconsistent to his own pleadings cannot be permitted to add in the written statement.

11. I have perused the written statement. No such contention was raised by the Petitioners (Defendants) in their written statement about the adverse possession. Their case in the written statement was completely different. Now a totally new ground is sought to be raised by way of the amendment. That in fact is contrary to the stand taken by the Defendants in their written statement before the Trial Court. This stand is also taken much belatedly though all the facts were within the knowledge of the Defendant. The amendment itself does not make a clear case of adverse possession. There is nothing mentioned on which date the possession of the Defendants had become adverse and hostile to the Plaintiff. There is no mention as to how the Defendants took possession from the Plaintiff in the year 1987. The Appellate Court has given sufficient reasons for not permitting to carrying out that amendment. I do not see any reason to interfere with the order. Hence the Petition is dismissed.

(SARANG V. KOTWAL, J.)