

Arjun

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

SECOND APPEAL NO.430 OF 2022

Shantabai Maruti Chandanwale ...Appellant

V/s.

Shamrao Dnyandev Kshirsagar & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO.3290 OF 2022
IN
SECOND APPEAL NO.430 OF 2022**

Shantabai Maruti Chandanwale ...Applicant

In the matter between :

Shantabai Maruti Chandanwale ...Appellant

V/s.

Shamrao Dnyandev Kshirsagar & Ors. ...Respondents

Mr. Chetan G. Patil, for the Appellant/Applicant.

Mr. Yuvraj Narvankar, for the Respondents.

**CORAM : MADHAV J. JAMDAR, J.
DATED : JULY 05, 2023**

P.C.:

1. Heard Mr. Patil, learned counsel appearing for the Appellant and Mr. Narvankar, learned counsel appearing for the Respondents.

2. Mr. Patil, learned counsel appearing for the Appellant has raised following substantial questions of law :

i] Whether the learned Executing Court has committed illegality in not framing issue concerning Appellant's independent right, title and interest particularly that the Appellant has acquired the ownership by adverse possession and, therefore, the impugned order of the learned Executing Court suffers from grave illegality?

ii] Whether the learned First Appellate Court while confirming the order passed by the learned Executing court has completely ignored that no issues are framed and no proper opportunity is given to the Appellant?

3. Mr. Patil, learned counsel appearing for the Appellant and Mr. Narvankar, learned counsel appearing for the Respondents have advanced rival submissions.

4. Before considering the rival submissions, it is necessary to set out certain admitted factual aspects :-

- (i) One Smt. Laxmibai Dhondiram Chandanwale filed Regular Civil Suit No.1752 of 2012 in the Court of Civil Judge, Junior Division, Kolhapur *inter alia* seeking injunction. In the said suit, Laxmibai raised the claim of tenancy of the suit property

and further claimed that she is in possession of the same for more than 50 years.

- (ii) In the said Regular Civil Suit No.1752 of 2012, the Defendant Nos.1 to 5 i.e. present Respondent Nos.1 to 5 filed counter claim. In the counter claim *inter alia* it is the contention of the Respondent Nos.1 to 5 that the claim of the original Plaintiff Smt. Laxmibai Dhondiram Chandanwale i.e. Respondent No.6 in the present Second Appeal is incorrect and that the owner of the suit property is Respondent No.5 and, Respondent No.6 was only given possession for temporary period and the said possession is permissive.
- (iii) The learned Trial Court decreed the suit and dismissed the counter claim, and granted injunction against Respondent Nos.1 to 5 i.e. original Defendant Nos.1 to 5.
- (iv) The learned First Appellate Court in Regular Civil Appeal No.162 of 2016 filed by the present Respondent No.1 to 5 i.e. original Defendants allowed the said Appeal by holding that the

original Plaintiff has failed to prove that she is the tenant of the suit property and her possession is only permissive possession. The learned First Appellate Court has also allowed the counter claim and the Plaintiff was ordered to deliver vacant and peaceful possession of the suit property to the Defendant No.5 within three months from the date of the said order.

(v) The said Judgment and the Decree of the learned First Appellate Court is challenged in the Second Appeal No.864 of 2017 and the said Second Appeal was dismissed by a learned Single Judge by the Judgment and Decree dated 30th January 2018.

(vi) For the execution of the said Decree, the Regular Darkhast No.142 of 2017 was filed and in the said Regular Darkhast No.142 of 2017, the present Appellant i.e. Shantabai Maruti Chandanwale appeared as an obstructionist and she moved Application bearing Exh.16 in Regular Darkhast No.142 of 2017 under Section 47 r/w Order XXI Rule 97 of the Civil Procedure Code, 1908. By the

order dated 20th June, 2019, the said Application bearing Exh.-16 was rejected by the learned 6th Joint Civil Judge, Junior Division, Kolhapur.

(vii) The said order was challenged by filing Regular Civil Appeal No.221 of 2019 and the said Appeal was dismissed by the Judgment and Decree dated 26th February 2021.

5. In the present Second Appeal, both these orders dated 20th June 2019 and 26th February 2021 are challenged. Both the learned Courts have concurrently held that the Appellant i.e. obstructionist has failed to prove her independent right, title and interest.

6. It is significant to note that in the said Exh.-16 Application filed in R. D. No.142 of 2017 it is the contention of the present Appellant that she has become owner by adverse possession and she is in occupation of the suit property. It is her case that she has been in long standing, uninterrupted, peaceful, continuous possession of the suit property. It is significant to note that in the said Application, it has not been disclosed by the present Appellant that she is the daughter of the Judgment Debtor i.e. Laxmibai Dhondiram Chandanwale.

Both the learned Courts have observed that except Voter Card and Aadhar Card there is no other evidence. In view of the above factual position, it is necessary to consider the substantial questions of law raised by Mr. Patil, learned counsel appearing for the Appellant.

7. Mr. Narvankar, learned counsel appearing for the Respondents has relied on the decision of the Supreme Court in the case of *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust & Anr.*¹. He more particularly relied on paragraph 14 of the same, which reads as under :

“14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. **The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence.** The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.”

(Emphasis added)

¹ (1998) 3 SCC 723

8. Mr. Narvankar, learned counsel also relied on the decision of a learned Single Judge passed in the Second Appeal No.403 of 2014 [Nagpur Bench].

9. In view of law laid down by the Supreme Court in the case of *Silverline Forum Pvt. Ltd. (supra)*, it is clear that the adjudication under Order XXI Rule 97 of the Civil Procedure Code, 1908 need not necessarily involve a detailed enquiry or collection of evidence. The Court can make the adjudication on admitted position or even on the averments made by the obstructionist. It has also been held that the Court can direct the parties to adduce evidence for such determination if the court deems it necessary.

10. In the present case, admittedly, obstructionist is the daughter of the Judgment Debtor. The Judgment Debtor has come up with the case that she is the tenant of the suit property for more than 50 years. In the said proceedings, finding has been recorded that said Laxmibai was in permissive possession and the said finding has been confirmed up to the High Court. Thereafter, the daughter of the Judgment Debtor has filed obstructionist Application bearing Exh.-16 in R. D. No.142 of 2017 raising obstruction

and she has contended that she has become owner by adverse possession.

11. It is significant to note that in the entire Exh.-16 Application, it has not been disclosed that the obstructionist is the daughter of Judgment Debtor. Apart from that, when her alleged adverse possession has started is also not mentioned. Article 65 of the Limitation Act, 1963 prescribes period of limitation of twelve years for filing a suit for possession of an immovable property or any interest therein based on title. The said limitation of twelve years starts when the possession becomes adverse to the Plaintiff.

12. Therefore, in the present case, if an obstructionist is claiming to have independent right, title and interest then, she should have disclosed when her adverse possession has started so as to ascertain her independent right, title and interest. It is settled legal position that mere possession for long period is not the adverse possession.

13. Therefore, in view of the above factual position, no illegality is committed by both the learned Courts in proceedings to decide Exh.-16 Application without asking the Appellant to lead evidence. Both the learned Courts have

concurrently held that the Appellant has failed to establish her own independent right, title and interest and even her said claim of adverse possession.

14. It is admitted position that, the Judgment Debtor is mother of the Appellant i.e. obstructionist and, therefore, her long standing possession is totally irrelevant to show that she has got independent right, title and interest or to prove her plea of adverse possession. Accordingly, there is no substance in the substantial questions of law raised by Mr. Patil, learned counsel appearing for the Appellant.

15. In view of the above discussion, the Second Appeal is dismissed, however, with no order as to costs.

16. In view of dismissal of the Second Appeal, nothing survives in the Interim Application and the same is also dismissed.

[MADHAV J. JAMDAR, J.]