



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 118 OF 1994

WITH SECOND APPEAL NO. 119 OF 1994

Pramilabai Sadashiv Jagtap
Age : 40 yrs, occ : agri., & household
R/o Padhegaon, Taluka Shrirampur,
District Ahmednagar

Appellant
(original deft.)

Versus

Ganpat Murlidhar Bankar
(Died) Through LRs

- 1-A. Krishnabai Ganpat Bankar
(Deceased) through LRs
- 1-B. Balasaheb Ganpat Bankar
(Deceased) through LRs
- 1B-i. Narendra Balasaheb Bankar
Age : 42 yrs, occ : agri.,
- 1B-ii. Jitendra Balasaheb Bankar
Age : 40 yrs, occ : agri.,
- 1B-iii. Vijaya w/o Ajay Shinde
Age : 35 yrs, occ : housewife
R/o At Post Mali Chincholi,
Tal. Newasa, Dist. Ahmednagar.
- 1B-iv. Ratnmala w/o Balasaheb Bankar
Age : 64 yrs, occ : housewife
Respondent Nos. 1B-i, 1B-ii and
1B-iv r/o Padhegaon, Taluka
Shrirampur, Dist Ahmednagar
- 1-C. Uttam Ganpat Bankar
Age : 57 yrs, occ : agri.,
- 1-D. Pralhad Ganpat Bankar
Age : 60 yrs, occ : agri.,

R/o Padhegaon, Tal. Shrirampur,
District Ahmednagar

Respondents

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Smt. Naseembanu I. Deshmukh and Ms. Poonam V. Bodkhe,
Advocates for the appellant in both appeals.

Mr. R.R. Karpe, Advocate for respondent Nos. 1B-i to 1B-iv
and respondent Nos. 1-C and 1-D in both appeals.

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CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 28.02.2024

Judgment Pronounced on : 03.05.2024

Judgment :

1. The appellant, who is the original defendant in Regular Civil Suit No.73/1980 as well as Regular Civil Suit No. 136/1980, has challenged the common judgment and decree passed by the District Judge, Ahmednagar (hereinafter referred to as “the learned first Appellate Court”) in Regular Civil Appeal No.89/1985 and Regular Civil Appeal No.92/1985, whereby the suits filed by the present respondent i.e. original plaintiff Ganpat Murlidhar Bankar for possession as well as injunction in respect of the suit property, are allowed. To avoid the ambiguity, the appellant as well as original respondent in these appeals are mentioned by their original status in the suits.

2. The background facts giving rise to the present appeals are as under :

The plaintiff instituted R.C.S. No. 73/1980 by contending that the suit house bearing Grampanchayat No. 234 is owned by him and he leased out one room of the said house to the defendant on 01.12.1973. Thereafter he also leased out remaining room to the defendant on 01.11.1975. Monthly rent of those rooms was fixed to Rs.40/- i.e. Rs. 20/- each. Defendant did not pay single *pai* towards rent amount and on 04.02.1980 also brought construction material to carry out illegal construction in respect of the suit house by encroaching the open space. As such, the plaintiff Ganpat was constrained to file R.C.S. No. 73/1980 for permanent injunction and R.C.S. No. 136/1980 for possession, recovery of rent and mesne profits.

3. On the contrary, the defendant resisted both the suits by contending that her husband Sadashiv and plaintiff were good friends of each other and since Sadashiv was not resident of Padhegaon, he had purchased the suit house in the year 1973 from earlier owner Sudhakar Kajale in the name of plaintiff. She denied landlord-tenant relationship between herself and plaintiff as alleged by the plaintiff. According to her, the plaintiff is a *Benamidar* and her husband was the real owner of the suit house.

4. Learned Civil Judge (Junior Division), Shrirampur (hereinafter referred to as “the learned trial Court”) vide common judgment and decree dated 19.01.1985, dismissed both the suits with costs. However, the learned first Appellate Court decreed both these suits in favour of the plaintiff, and therefore, these Second Appeals.

5. Learned Counsel for the appellant/defendant vehemently argued that the learned first Appellate Court has definitely erred in holding the plaintiff as owner of the suit house and ignored vital admissions given by the witnesses of the plaintiff. Learned Counsel for the appellant/defendant further submitted that the learned first Appellate Court, despite negative finding on the landlord-tenant relationship between the parties as alleged by the plaintiff, wrongly allowed the suits filed by the plaintiff. According to the learned Counsel for the appellant, the appellant is having possessory title which is always good against the world except the true and real owner as it is according to the rule “possession follows title”. In addition to the submissions at bar, the learned Counsel for the appellant also filed written notes of arguments.

6. On the contrary, learned Counsel for the

respondent / plaintiff supported the judgment of learned first Appellate Court and submitted that the learned first Appellate Court has in fact properly appreciated the evidence and legal principles, and therefore, both these appeals are liable to be dismissed.

7. Heard rival submissions. Also perused documents on record alongwith the impugned judgments.

8. As per the contention of learned Counsel for the appellant/defendant, this Court has formulated following substantial questions of law vide order dated 09.02.2024 :

- (i) Whether the suit of the plaintiff is maintainable since the defendant had claimed to be owner of the suit property since beginning?
- (ii) Whether both the Courts below ere having jurisdiction when the suit property was part of co-operative society?
- (iii) Whether there was no cause of action as well as limitation?

9. The record shows that the plaintiff is claiming ownership over the suit house by contending that he purchased the suit house from one Sudhakar Kajale for a consideration of Rs. 4,500/- on 01.02.1973 in presence of Kondiram Yeskar and Gangadhar Balaji i.e. the Chairman of

the Society. It appears that this Kondiram Yeskar has deposed accordingly. Moreover, the erstwhile owner Sudhakar Kajale, who is examined as plaintiff's witness, has also admitted about receipt of aforesaid consideration amount of Rs. 4,500/- from the plaintiff and sale of the house to the plaintiff. It has further come in the evidence of Sudhakar Kajale as well as plaintiff that they submitted their applications to the Chairman of the Society wherein the suit house is located in respect of the aforesaid transaction and the Secretary Kondiram Yeskar, who is also examined as plaintiff's witness, has produced certified copies of those applications at Exhs. 41 and 42. On perusal of those applications, it is evident that there was transaction between the plaintiff and Sudhakar Kajale in respect of sale of the suit house. As per those applications, Resolution No.2 was also made by the Society and its certified copy is at Exh.40. Thus, from such type of evidence, it has been clearly established that the plaintiff had purchased the suit house from erstwhile owner Sudhakar Kajale by paying him consideration of Rs. 4,500/-. The Resolution No.2 at Exh.40 indicates that pursuant to the aforesaid transaction the name of plaintiff was entered into the record of Housing Society as a Member and the suit plot was transferred in the name of

plaintiff. Further, the certificate dated 24.08.1984 at Exh. 46 issued by Sarpanch and Gramsevak of the concerned village also indicates that plaintiff is paying taxes in respect of the suit house. There are other documents also showing that name of plaintiff is recorded as owner of the property in Grampanchayat record.

10. On the other hand, the appellant/defendant had come out with the case that her husband Sadashiv had in fact purchased the suit house by paying necessary consideration of Rs. 4,500/- to the erstwhile owner Sudhakar Kajale, but since her husband was not from village Padhegaon and the suit house was reserved only for residents of Padhegaon, it was shown to be purchased in the name of plaintiff. However, to support this theory the evidence of defendant is self-contradictory. One one hand she is saying that her husband had paid consideration amount, but on the other hand she is claiming that she herself had paid the consideration amount. Learned Counsel for the defendant / appellant vehemently argued that despite being asked, the plaintiff did not file any written agreement of sale whereby he had purchased the suit house. However, even though the said written agreement of sale is not on record, but the

evidence of witnesses of the plaintiff, who are the earlier owner as well as Secretary of the Society, clearly indicates that it was the plaintiff who had purchased the suit house. Further, there is no reference in their evidence about the suit house being purchased by Sadashiv i.e. the husband of present appellant. Learned Counsel for the appellant/defendant also tried to argue that the erstwhile owner as well as Chairman of the Society were closely associated with the plaintiff, and therefore, their evidence in absence of written agreement of sale is not trustworthy. However, it is to be noted that the defendant herself has not established her case of Benami transaction, and therefore, the burden of proof showing that her husband had purchased the suit house was definitely upon her wherein she has miserably failed. Thus, it has been established that the defendant/appellant has definitely failed in proving her husband as owner of the suit property despite claiming so. The suit of the plaintiff for possession is definitely maintainable. As such, the first substantial question of law does not survive.

11. Learned Counsel for the appellant/defendant further submitted that the plaintiff who had come with the theory of landlord-tenant relationship, has miserably failed to

establish the same, and therefore, there cannot be any cause of action on the basis of that theory and his suit is also barred by limitation. Admittedly, the learned first Appellate Court in absence of evidence in respect of landlord and tenant relationship between the parties, has negated the same. However, it has been established by the plaintiff that he had purchase the suit house, and therefore, instead of landlord-tenant relationship, there could be a case of permissive possession since the appellant/defendant was inducted in the suit house after its purchase by the plaintiff. The appellant / defendant has not come out with the case of adverse possession, and therefore, even if the plaintiff has failed to establish the landlord-tenant relationship between himself and the defendant, he has at least succeeded in proving his ownership over the suit house. Therefore, he is definitely entitled for claiming possession from the defendant of the suit house specially when the defendant herself failed in proving her title over the same. As such, the substantial question as regards the cause of action as well as limitation also does not survive.

12. Learned Counsel for the appellant/defendant also raised aspect of jurisdiction of both the learned Courts below

and contended that when the suit property was part of the Co-operative Society, the jurisdiction of Civil Court is totally barred. However, the present dispute is not within the members of the Society and it is nowhere touching to the business of Society as contemplated in section 91 of the Co-operative Societies Act. On the contrary, it appears private matter between the plaintiff and defendant, and therefore, there is no such bar for the jurisdiction of Civil Court to decide the instant matter. As such, the substantial question of law to that effect also does not survive.

13. After considering the entire evidence on record it has been clearly established on the basis of oral and documentary evidence that the plaintiff had purchased the suit house from erstwhile member of the Society, wherein it is located, for the consideration of Rs. 4,500/- and then put the defendant in possession of the same. Though the plaintiff has not established landlord-tenant relationship between himself and the defendant, but at least he has succeeded in proving his ownership. Moreover, the appellant/defendant has miserably failed to establish the fact that her husband was the real owner of the suit house and the plaintiff is merely a *Benamidar*. Therefore, considering all these aspects

there is no substance in these Second Appeals and the same stand dismissed.

(SANDIPKUMAR C. MORE, J.)