



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

**SECOND APPEAL NO. 27 OF 2024
WITH
CIVIL APPLICATION NO. 1583 OF 2024**

1. Sk. Kausarbi @ Kesharbi w/o Sk. Ratan,
Age : 60 Years, Occ. Household
2. Sk. Farook s/o Sk. Ratan,
Age : 41 years, Occ. Private Service
3. Sk. Latif s/o Sk. Ratan,
Age : 39 years, Occ. Private Work
4. Sk. Mehboob s/o Sk. Ratan,
Age : 37 Years, Occ. Private Service,

All resident of Vishnu Nagar, Basmath Road,
Parbhani

.. Appellants
(Orig. Defts. 2 to 5)

V E R S U S

1. Ramchandra S/o Trimbakrao Katruwar,
Age : 81 Years, Occ. Business,
R/o. Main Road, Manwath,
District Parbhani.

..Respondent
(Orig. Plaintiff)

....
*Advocate for the Appellants : Shri. B. V. Virdhe h/f Mr. Namde
Yugandhara Abhijit*
Advocate for Respondent : Mr. R.F. Totla h/f Mr. B.A. Shinde
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 02.04.2024

ORDER:-

1. Heard rival submissions on admission of this Second
Appeal which is filed against the concurrent findings of both

the learned Courts below.

2. The appellants, who are the original defendant Nos. 2 to 5 in Special Civil Suit No. 41 of 2012, have preferred this appeal against the judgment and decree dated 17.10.2023, passed by the learned District Judge, Parbhani, i.e. the learned First Appellate Court in Regular Civil Appeal No. 155 of 2017, whereby the learned First Appellate Court has confirmed the judgment and decree dated 29.11.2017 passed by the learned trial Court i.e. Civil Judge, Senior Division, Parbhani in the aforesaid civil suit. Under the said decree, the present appellants are directed to deliver the vacant possession of the suit plot i.e. plot No. 63 on Survey No. 315 (Part) and 316 (Part), situated at Parbhani admeasuring 50 x 50 square feet, within two months by removing the existing temporary structure thereon.

3. The learned counsel for the appellants/original defendant Nos. 2 to 5 vehemently argued that the learned trial Court as well as the learned First Appellate Court definitely failed to appreciate the evidence on record, specially in respect of the contentions of the present appellants that they are in possession over some other property and not the suit plot and that they have become the owner of the suit plot by way of

adverse possession. According to him, the learned trial Court also failed to consider the aspect of limitation whereby the suit of the respondent/plaintiff was completely barred.

4. On the contrary, the learned counsel for the respondent/plaintiff strongly opposed the submissions made on behalf of appellants/defendant Nos. 2 to 5. According to him, the appellants have miserably failed in proving their all defences/pleas which were in fact contrary to each other. He pointed out various observations of the learned trial Court as well as the learned First Appellate Court whereby both the Courts below were concurred on main aspects. According to him, the suit plot was acquired by the respondent/plaintiff by way of compromise deed in the previous suit between himself and other partners of Partnership Firm by name M/s. Vishnu Ginning, Pressing and Oil Mill and the said compromise decree has remained unchallenged till today. He also pointed out certain admissions given on behalf of the present appellants whereby they admitted that they erected the shed on the suit plot without any permission and there was no evidence on record about their possession since 1978. As such, he prayed for dismissal of this Second Appeal at admission stage.

5. Heard rival submissions and also perused the

documents on record.

6. It is significant to note that as per the learned counsel for the appellants, following substantial questions of law are involved in this appeal :-

(A) Whether both the Courts below failed to consider that suit of the plaintiff was barred by limitation ?

(B) Whether both the learned Courts below failed to frame necessary issue/point on the ground of identification of the property ?

7. From perusal of the judgments of both the learned Courts below, it is evident that the suit plot was initially property of M/s. Vishnu Ginning and Pressing Oil Mill and as the partners of said Oil Mill decided to close their business, they distributed the suit plots along with other properties amongst themselves. In fact, one Special Civil Suit bearing No. 22 of 2005 was filed in respect of the distribution of properties of the aforesaid Oil Mill and a compromise between the partners of the said Oil Mill took place, and accordingly the respondent/plaintiff received the suit plot along with other plots. It is extremely important to note that the compromise decree in the said suit is not at all challenged till today.

8. Further, it is important to note that the appellants, after

appearing in the Special Civil Suit No. 41 of 2012, had taken contrary pleas in respect of their possession over the suit plot. Firstly, they came with the case that they are not in possession of the suit plot and one Raghubhai Patel had, in fact, agreed to sell the property in dispute to them under an agreement to sale. Secondly, they came with a case that they perfected their title over the suit plot by way of adverse possession since they are in possession of the same since last 32 to 35 years. However, so far as their contention that they purchased the suit plot from Raghubhai Patel is concerned, the appellants have failed to produce any document to that effect, such as, agreement to sale. Moreover, they have not even filed suit for specific performance of contract against the said Raghubhai Patel. The appellants are also claiming that the property which is in their possession, is different from the suit plot. However, except bare words, there is no document available on record to show that the property in their possession is different from the suit plot. They did not examine anybody from the Municipal Corporation or any other Department to show that the property in their possession is having different number and location than the suit plot. Thus, both the aforesaid contentions raised by the appellants/defendants are, in fact, not supported by reliable and trustworthy evidence.

9. So far as the contention of the appellants that the suit is barred by limitation is concerned, it is the case of appellants that they are in possession of the suit plot since last 32 to 35 years. However, except bare words they have not produced any document on record to show that they are in possession of the suit plot from such specific date. On the contrary, the appellants in their cross-examination have admitted that there was no document to show as to how they were put in possession. It is significant to note that for the plea of adverse possession, one has to establish that his possession became adverse to that of the plaintiff i.e. the original owner. Article 65 of the Indian Limitation Act, 1963, in fact, pre-supposes that limitation starts only if the defendants prove the factum of adverse possession affirmatively from a particular time. This observation has been made by this Court in the case of ***Ramchandra Genu Raut Vs. Mohan Kondiram Wadkar, 2019(6) Mh.L.J. 475.***

10. In the present matter, the appellants are not having any reliable document, whereby they can prove that they were put in possession since last 32 to 35 years on a particular date. Therefore, considering the observation of this Court in the aforesaid case, there is no substance found in the contention

of the learned counsel for the appellants that the suit of the respondent/plaintiff is barred by limitation. Further, it is also important to note that there was admission on behalf of the appellants in the cross-examination that there was no permission granted to them to erect the shed on the suit plot. Therefore, in absence of evidence in respect of all the contentions raised by the appellants before both the learned Courts below, no substantial questions of law appear to be involved in this matter. On the contrary, there are concurrent findings in favour of the present respondent/ plaintiff by both the learned Courts below. Further, it is the case of respondent/plaintiff that his brother had, in fact, permitted the appellants to use the suit plot for temporary period and when such case is made out, then there is no question of raising plea of adverse possession.

11. Therefore, considering all these facts, no substance is there in the present appeal and accordingly the Second Appeal stands dismissed along with the pending Civil Application at admission stage.

(SANDIPKUMAR C. MORE, J.)

12. After pronouncement of the order, the learned counsel for the appellants requested to grant interim relief, however, the appeal is dismissed at admission stage alongwith the pending Civil Application and there was no interim relief in force during the pendency of this appeal. In view of the same, the request made by learned counsel for the appellants is hereby refused.

(SANDIPKUMAR C. MORE, J.)

Y.S.K.