



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

**SECOND APPEAL NO.610 OF 2021
WITH
CIVIL APPLICATION NO.13232 OF 2021**

Trimbak s/o Basayya Swami,
Age : 56 years, Occu.: Business,
R/o.: Basveshwar-Nagar, Nilanga,
Tq. Nilanga, District : Latur

.... **APPELLANT**
(Orig. Plaintiff)

VERSUS

1. Dayanand S/O Sangayya Swami,
Age : 54 years, Occu.: Agril.,
R/o.: Basveshwar Tq. Chakur,
District Latur

2. The Chief Executive Officer,
Municipal Council Nilanga,
Tq. Nilanga, District : Latur

.... **RESPONDENTS**
(Orig. Defendants)

....
Mr. Sharad S. Halkude, Advocate for the Appellant
Mr. Vilas P. Savant, Advocate for Respondent No.1

....

**WITH
SECOND APPEAL NO.611 OF 2021
WITH
CIVIL APPLICATION NO.13234 OF 2021**

Trimbak s/o Basayya Swami,
Age : 56 years, Occu.: Business,
R/o.: Peth, Nilanga,
Tq. Nilanga, District : Latur

.... **APPELLANT**
(Orig. Plaintiff)

VERSUS

Dayanand S/O Sangayya Swami,

Age : 54 years, Occu.: Agril.,
R/o.: Basveshwar Tq. Chakur,
District Latur

.... **RESPONDENTS**
(Orig. Defendant)

....
Mr. Sharad S. Halkude, Advocate for the Appellant
Mr. Vilas P. Savant, Advocate for Respondent.

....

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 30/09/2024.

P. C. :

1. Both these appeals are filed by the appellant, who is original plaintiff, against concurrent findings of both the learned courts below in the suits filed by him.

2. Second Appeal No.610 of 2021 is filed by the appellant / plaintiff against judgment and decree passed by the learned District Judge-1, Nilanga i.e. the learned first appellate court in Regular Civil Appeal No. 76 of 2012 dated 05/11/2019 whereby the learned first appellate court has confirmed the judgment and decree dated 02/07/2012 passed by the learned trial court i.e. 3rd Joint Civil Judge (Junior Division), Nilanga in Regular Civil Suit No.282 of 2007. Under the said decree the aforesaid suit filed by the appellant / plaintiff has been dismissed. It is significant to note that the Regular Civil Suit No.282 of 2007 was filed by the

appellant / plaintiff for cancellation of the decree passed by the learned trial judge in Regular Civil Suit No.16 of 2006, filed by the present respondent / defendant against the Chief Officer, Municipal Council, Nilanga. In that suit, the respondent / defendant had sought direction to enter his name in the record of rights of the suit plot alongwith appellant / plaintiff. In the said suit, the learned trial judge had directed the then defendant – Municipal Council, Nilanga to enter the name of the respondent / defendant in the suit plot alongwith the appellant / plaintiff. The learned trial court after conducting the trial, dismissed the said Regular Civil Suit No.282 of 2007 under judgment and decree dated 02/07/2012. Further, the appeal preferred by the appellant / plaintiff against the said decree i.e. Regular Civil Appeal No.76 of 2012 also got dismissed by the learned first appellate court. Hence, this second appeal.

3. It is significant to note that Second Appeal No. 611 of 2021 is filed by the appellant / original plaintiff against the judgment and decree dated 05/11/2019 passed by the learned first appellate court i.e. District Judge-1, Nilanga in Regular Civil Appeal No.74 of 2012 confirming the judgment and decree passed in Regular Civil Suit No.90 of 2008 passed by the learned trial court on

02/07/2012. The aforesaid suit was filed by the appellant / plaintiff for specific performance of contract and to give direction to the defendant to execute a registered sale deed in favour of him on the basis of earlier unregistered sale deed dated 17/02/1994.

4. It was contended by the appellant / plaintiff that he and respondent / defendant jointly purchased the suit plot i.e. plot No.53 in Survey No.295/A/B/C from one Abdul Hakim Noor Mohammad by way of a registered sale deed dated 11/08/1993 for the consideration of Rs.24,000/-. However, it is further contended that the respondent / defendant on 17/02/1994 sold his share in the suit plot to the appellant / plaintiff for the consideration of Rs.5,000/- by way of a unregistered sale deed written on a stamp paper of Rs.20/-. Thereafter, the appellant / plaintiff impounded the aforesaid unregistered sale deed on 09/05/2006. It was further contended by the appellant / plaintiff that he was in undisturbed possession of the suit plot on 17/02/1994 where upon he constructed a flour mill. His name was also entered into the record of right maintained by Nilanga Municipality in respect of the suit plot. However, since the defendant denied the execution of the registered sale deed, the appellant / plaintiff was constrained to

file Regular Civil Suit No.19 of 2008 for the purpose mentioned above.

5. The defendant in both the suits denied all the adverse allegations made by the appellant / plaintiff against him and came with the case that the so called unregistered sale deed dated 17/02/1994 was in fact a fabricated document created by the appellant / plaintiff behind his back. According to him, he never handed over possession of the suit plot to the appellant / plaintiff at the time of so called deed Exhibit-46. Thus, the defendant prayed for dismissal of both the suits.

6. The learned counsel for the appellant / plaintiff while arguing on admission in both these appeals, vehemently submitted that both the learned courts below have erred in dismissing the suits of the appellant / plaintiff. According to him, possession of the suit plot was handed over to him by the respondent / defendant at the time of execution of the aforesaid unregistered sale deed Exhibit-46 and since then till 09/10/2006 he is in undisturbed possession and therefore, he has already become owner of the suit plot by way of an adverse possession. He pointed out that though the specific pleading about becoming owner of the suit plot by way of adverse

possession, is not there in the suit, but all the elements constituting an adverse possession are there on record and therefore, the substantial question of law that he has become owner of the suit plot by way of an adverse possession needs appreciation in the present second appeals. He has also submitted following substantial questions of law in these appeals as follows:

- I) *Whether plaintiff has perfected his title by adverse possession in the facts and circumstances of the case and in the light of finding of facts by both the trial court and the first appellate courts?*
- II) *Whether mere litigation in the court about suit plot and there was no any attempt at all to dispassion the plaintiff by defendant, can it be said to be interruption in the possession period required to constitute adverse possession ?*
- III) *When defendant has not obstructed the possession of plaintiff and not filed suit or courtier claim within 12 years from starting of possession of plaintiff can it be said that the plaintiff has perfected his title by ouster and adverse possession ?*
- IV) *Whether the document Exhibit-74, the unregistered sale deed but impound can be admitted in evidence for collateral purpose, to prove the adverse possession of the plaintiffs ?*
- V) *Whether there is perversity in the finding of district court that the possession of the plaintiff might be*

permissive when there is no pleading and evidence of defendant ?

- VI) *Whether there is perversity in the finding of the district court that stamp exhibit -74 might be in the custody of plaintiff and he might have used later on ?*

The learned counsel for the appellant / plaintiff has relied upon the following citations :

- A) *Dandapani Naik vs. State of Orissa, reported in LAWS(ORI)-1986-7-17;***
- B) *Govind Yadav and others vs. Deoki Devi and others, reported in AIR 1980 Patna 113;***
- C) *Dula Bewa and others vs. Balunki Padhan, reported in AIR 1973, ORI 180 &***
- D) *Yeshwant Deorao vs. Walchand Ramchand, reported in AIR 1951 SC 16.***

7. On the contrary, the learned counsel for the respondent / defendant strongly opposed the submissions made on behalf of the appellant / plaintiff. According to him, both the learned courts below on the basis of evidence, have concurrently held that the alleged unregistered sale deed dated 17/02/1994 is forged and fabricated and possession of the suit plot was never transferred to the appellant / plaintiff by virtue of that document Exhibit-46. Further, both the learned courts have concurrently held that the suit of the appellant / plaintiff is not in limitation, which is filed for

specific performance. Further, it is also observed concurrently by both the learned courts below that since the decree passed in Regular Civil Suit No.16 of 2006 filed by the present respondent / defendant was based on a registered document under which he had purchased the suit plot alongwith the appellant / plaintiff, though passed in absence of the appellant / plaintiff, is definitely binding upon the plaintiff. Thus, he claimed that there are concurrent findings of both the learned courts below against the plaintiff in both the suits and that too on the basis of evidence and hence no interference is required at the hands of this court in second appeals. According to him, the case of adverse possession as raised by the appellant / plaintiff is not at all sustainable and no such substantial questions of law as raised by the appellant / plaintiff, are involved in these matters. According to him, the citations relied upon by the appellant / plaintiff in respect of his theory of adverse possession and admissibility of document Exhibit-46, are not at all applicable since no such questions or issues are involved. Accordingly, he prayed for dismissal of both the appeals at admission stage.

8. It is significant to note that on going through the judgments in Regular Civil Suit No.90 of 2008 and Regular Civil Appeal No.74

of 2012 filed thereon, it is evident that the appellant / plaintiff is claiming direction to the respondent / defendant to execute a registered sale deed on the basis of earlier unregistered sale deed executed on 17/02/1994, which is at Exhibit-46. Admittedly, the defendant / respondent had denied the execution of such unregistered sale deed and claimed that it is bogus. The evidence led in said suit has also been filed on record and on the basis of said evidence, the learned trial court has clearly held that the suit of the appellant / plaintiff was hopelessly barred by limitation. It has come in the evidence that though the unregistered sale deed Exhibit-46 was registered on 17/02/1994, but no specific date was mentioned for executing the registered sale deed in the said document. As such, as per Article-54 of the Limitation Act, a period for three years for filing suit based on it was available to the appellant / plaintiff, but in the cross-examination itself the appellant / plaintiff had admitted that after three months of the said unregistered sale deed, he had asked the respondent / defendant to execute a registered sale deed, to which the respondent / defendant had refused. Thus, when denial of the respondent / defendant for execution of the registered sale deed was in the year 1994, then it was incumbent upon the appellant / plaintiff to file suit within three years from the said denial of 1994.

However, the present suit of the plaintiff is filed on 2008 and therefore, not in limitation. There cannot be any perversity in the findings of both the learned courts below that the suit is barred by limitation since it is based on evidence.

9. Moreover, though it is claimed by the appellant / plaintiff that at the time of execution of the document Exhibit-46 i.e. the unregistered sale deed of 17/02/1994, the respondent / defendant had handed over possession of the suit plot to him, but his own witness Rajendra Ghodke has clearly admitted that even after execution of such so called deed Exhibit-46 the respondent / defendant was residing on the suit plot for one to two years. Thus, the own witness of the appellant / plaintiff has falsified the entire case of the appellant / plaintiff that he was in possession of the suit plot since 17/02/1994 till 2006. Thus, period required for adverse possession is also not available for the appellant / plaintiff. Even otherwise also the respondent / defendant has succeeded in proving the said unregistered sale deed Exhibit-46 as a sham and bogus document on the basis of evidence of the appellant / plaintiff only. There are so many contradictions in the evidence of the witnesses of appellant / plaintiff on execution which have been clearly pointed out by the learned trial court. Therefore, the

observation of the learned trial court that the said document dated 17/02/1994 was fabricated one, which is confirmed by the learned first appellate court, is based on cogent evidence. As such, there is no perversity found in the concurrent findings of both the learned courts below in respect of judgments in Regular Civil Suit No.90 of 2008 and Regular Civil Appeal No.74 of 2012 filed thereon.

10. Same is the case in respect of another suit i.e. Regular Civil Suit No.282 of 2007 filed by the appellant / plaintiff for setting aside the decree in Regular Civil Suit No.16 of 2006 passed in the suit filed by the present respondent / defendant for entering his name in the record of rights of the suit plot. Though in the said suit the present appellant / plaintiff was not party, but the name of the respondent / defendant was entered into the record of rights maintained by the Municipality, Nilanga in respect of the suit plot, on the basis of a registered sale deed dated 11/08/1993, which is undisputed. Therefore, the findings of the learned trial court in that suit also is based on evidence on record. Further, in the said suit also the appellant / plaintiff could not prove that the respondent / defendant had alienated his share in the suit plot by way of an unregistered sale deed dated 17/02/1994. Moreover, he also could not establish that he constructed a flour mill on plot

No.53. Further, it is also proved that the said agreement dated 17/02/1994 was forged and fabricated. Thus, considering the evidence led by the parties in both the suits, the learned trial court as well as the learned first appellate court, have given concurrent findings against the appellant / plaintiff.

11. The learned counsel for the appellant / plaintiff by relying on various judgments as mentioned above vehemently submitted that though the issue of becoming the owner by an adverse possession is not pleaded by the appellant / plaintiff but the ingredients constituting his adverse possession are there on record and therefore, a substantial question of law in respect of same can be framed and decided in favour of the appellant / plaintiff. Besides, he also relied on judgments on the point of admissibility of the unregistered sale deed for upholding his possession as mentioned therein. However, as observed earlier own witness of the plaintiff has clearly admitted in the cross-examination that even after execution of the said unregistered sale deed, respondent / defendant had resided on the suit plot for certain period. Therefore, in the light of such admission, the admission of the respondent / defendant that the appellant / plaintiff was in possession of the suit plot since 1993 cannot be given much

weightage because the theory of an adverse possession has to be proved beyond doubt by the appellant / plaintiff only. As such, when both the learned courts below have concurrently held on the basis of evidence on record that the appellant / plaintiff could not establish the execution of so called unregistered sale deed dated 17/02/1994 and delivery of possession under the same, no substantial questions of law as raised by the appellant / plaintiff in these appeals, are involved. As such, when no such substantial questions of law are involved and findings of both the learned courts below based on the evidence on record then certainly no interference is required in the impugned judgments and decrees at the hands of this court. Accordingly, both the second appeals stand dismissed at admission stage alongwith civil applications therein.

(SANDIPKUMAR C. MORE, J.)