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

SECOND APPEAL NO. 237 OF 2024

**KRUSHAKUMAR VISHWANATH GADEWER
VERSUS
SHAIKH MUNEEER SHAIKH USMAN**

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Mr. Amol Kokad, Advocate h/f. Ms. S.D. Dubbewar
Mr. M.A. Shaikh, Advocate for respondent Nos. 1,2/2, 2/3 and 3
(Cavetors)

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 21 NOVEMBER, 2024.

ORDER :-

1. The appellant/original plaintiff takes exception to the judgment and decree dated 30.11.2023 passed by District Judge, Parbhani in R.C.A. No. 42 of 2019, thereby reversing the judgment and decree dated 1.3.2019 passed by Civil Judge (Junior Division), Selu, in R.C.S. No. 54 of 2011, by which the suit of the appellant/plaintiff for declaration of ownership and possession of suit property and declaring sale deed dated 8.12.2010 as null and void with further granting decree of perpetual injunction restraining the defendants from interfering in peaceful possession of the plaintiff.

2. The appellant/plaintiff instituted R.C.S No. 54 of 2011 contending that his father had been inducted as tenant in the suit premises since 9.6.1963. He was running a business in the name and

style of “Gadewar Dresses”. He was tenant in possession over the suit premises till his death in the year 1979. The plaintiff continued the business in the premises even after death of his father. Father of plaintiff had installed electric supply meter. He regularly paid charges towards consumption of electricity. The plaintiff is using the said premises and also paying the electricity charges, so also, municipal taxes. On 28.2.1995, he deposited Rs. 178/-. Since then, he is enjoying the suit property as lawful owners and possession continuously, in exclusion of the title of the defendant No.3. The name of the plaintiff is appearing in possession column in the Property register. Although defendant No.3 was knowing about aforesaid factual aspect, he transferred the suit property by executing a sale deeds bearing No. 2490 and 2489 dated 8.10.2010 in favour of defendant Nos. 1 and 3. Now, when defendant Nos. 1 and 2 tried to dispossess him, he filed a suit claiming relief of declaration and ownership and possession, cancellation of sale deeds dated 8.10.2010 and perpetual injunction. Defendants contested the suit by filing written statement, taking a plea that the plaintiff was minor at the time of death of his father. There was no possibility of business of father could be continued by the plaintiff. The claim of the plaintiff regarding acquisition of ownership by way of adverse possession is refuted by defendants.

3. The trial court framed the issues at Exh.50, recorded evidence of the parties and accepted the case of the plaintiff; consequently decreed the suit. The defendants filed appeal before the District Court, which came to be allowed holding that the plaintiff failed to prove that he perfected the right, title and interest in the suit property by way of adverse possession and also confirmed validity of sale deeds

executed by the defendant No.3 in favour of defendant Nos. 1 and 2.

4. Mr. Amol Kokad, learned advocate for the appellant, vehemently submits that there is voluminous evidence as regards continuous possession of the plaintiff. Plaintiff's father was inducted as tenant by father of defendant No.3. After death of plaintiff's father in the year 1979, plaintiff took over the business of his father and continued to occupy the suit premises. Although father of the plaintiff paid rent during his lifetime, plaintiff enjoyed possession over suit property without payment of rent and obstruction at the hands of defendant No.3 or his father. On 28.2.1995, plaintiff paid municipal tax of Rs. 178/-. Father of plaintiff continuously paid electricity charges. Receipts regarding such payment dated 28.2.1995, 5.4.2011 and 7.4.2011 are placed on record.

5. Mr. Kokad would further submit that since plaintiff has acquired title by way of adverse possession, sale deeds executed by defendant No.3 in favour of defendant Nos. 1 and 2 are invalid. The trial court has rightly appreciated aforesaid aspects and decreed the suit. However, the appellate court reversed the well reasoned judgment and decree of the trial court. He would further submit that when landlord took legal action for non-payment of rent in respect of suit property, the plaintiff has acquired title by way of adverse possession.

6. Per contra, Mr. M.A. Shaikh, learned advocate for respondents supports the judgment and decree passed by the appellate court. He would submit that long standing possession itself cannot bestow title by way of adverse possession in favour of the plaintiff. The

appellate court has rightly considered the aforesaid aspects and recorded finding that plaintiff failed to prove the hostility against title of defendant No.3 and consequently dismissed the suit.

7. Having considered submissions advanced, after going through the reasoning adopted by the Courts below, it would be appropriate to refer to certain observations of the Supreme Court as regards to the concept of adverse possession. The Supreme Court of India in the matter of ***Annasaheb vs. B.B. Patil, AIR 1993 SC 895*** has held as under :-

“Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.”

Similarly, in case of ***T. Anjanappa and others Vs. Somalingappa and another reported in (2006)7 SCC 570***, the Apex Court has held thus :-

“It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner.

The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

8. Taking into consideration the aforesaid pronouncements, it can be observed in present case, that plaintiff claims possession of the property in continuation of entry of his father as a tenant who was inducted by father of defendant No.3, i.e.owner of the property. Admittedly, the plaintiff's father paid rent during the lifetime i.e. till 1979. At the time of death of plaintiff's father, plaintiff was aged about 10 to 12 years, as his date of birth is 27.11.1966 and his brother Sitaram was aged 12 to 13 years of age.

9. In this background, it can be understood as to why father of defendant No.3 has not demanded rent. However, merely because land owner failed to recover rent, plaintiff cannot claim that he has perfected title by way of adverse possession. Plaintiff claims that he deposited property tax in the year 1995 and thereafter, acquired title by way of adverse possession. The appellate court has rightly considered all aspects in para.23 of the judgment and observed that although plaintiff has paid property tax, it is in the name of father of defendant No.3. The electricity bills against connection secured by plaintiff's father would not be sufficient to hold hostile title of the plaintiff. It is well settled that unless hostility is seen in the conduct of the person in possession while holding exclusive possession beyond the statutory period, in exclusion of actual owner, the plaintiff cannot succeed to establish claim of title based on

adverse possession.

10. Apparently, entry of plaintiff was in pursuance to continuation of permissive possession of his father as a tenant. Even if it is assumed that plaintiff continued in possession over the property without payment of rent, there is nothing on record to show that plaintiff denied title of defendant No.3 or shown hostility against title of defendant No.3. The evidence shows that, in fact, electricity connection was continued in name of plaintiff's father and receipts relied by the plaintiff are regarding arrears of charges of disconnected electric meter. The plaintiff could not produce on record the Electricity bills from 2011 to 2018. the appellate court has specifically observed that Shop Act Licence was issued in the name of Sanjivani Sitaram Gadewar i.e. Sister in law of plaintiff and prior to that it was renewed in the name of his brother. This fact clearly establish that plaintiff's brother was running the business and thereafter his wife continued the same in suit premises. Therefore, it is difficult to hold that plaintiff continued possession over the shop.

11. In the light of aforesaid observations, it is evident that the findings of the appellate court are based on proper appreciation of facts and evidence and correct application of principles of law. Hence, no substantial question of law is made out in the appeal. Appeal, sans merit, stands dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-