



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 10 OF 2021
WITH CIVIL APPLICATION NO. 482 OF 2021

1. The State of Maharashtra
2. The Executive Engineer

.... APPELLANTS
(Ori. Defendants)

VERSUS

1. Dilip s/o Tulshiram Gomare
2. Ankush @ Malba s/o Tulshiram Gomare

... RESPONDENTS
(Ori. Plaintiffs)

Mr. S. V. Hange, AGP for appellants
Mr. A. N. Sabnis, Advocate h/f Mr. V. D. Gunale, Advocate for respondent
Nos. 1 and 2.

CORAM : R. M. JOSHI, J.
DATE : 8th JANUARY, 2024

P.C. :-

1. This appeal takes exception to the judgment and order dated 11/09/2020 passed by District Judge-4, Latur in Regular Civil Appeal No. 53/2017 whereby the judgment and order dated 08/02/2017 passed in Regular Civil Suit No. 140/2015 decreeing the suit was confirmed.

2. Facts which led to the filing of the present appeal can be narrated in short as follows:

(i) Plaintiffs are the joint owners of land bearing Gat Nos. 514 and 500 situated at Latur-Nitur Road at Babhalgaon, Tq. and Dist. Latur. It is the

case of the plaintiffs that land admeasuring 153 x 300 sq.ft (suit property) from Gat No.514 and 500 were handed over to defendant No.1 (appellant) for temporary use thereof. It is further claimed by the plaintiffs that the said user was permissive one and without any charges, fees, rent etc. since 1983. Pursuant to the said permission store room was constructed. Plaintiffs issued notice dated 05/12/2014 revoking the license issued in favour of the defendant No.1. Defendant No.1 failed to comply with the said notice, hence suit came to be filed for seeking possession of the suit property and damages, with the contention of the plaintiffs the area in which suit premises suit property is situated fetches rent of approximately Rs.25,000/- per month.

(ii) Defendant No.1 filed written statement at Exhibit 21 and opposed the suit. Plaintiffs ownership over the suit property is not disputed. Defendants, however, denied permissive possession thereof. According to the defendants a store room shed was constructed in the year 1984 and the entry of the same is found in Grampanchayat record. It is denied that it was a license. Any oral agreement is also denied. The defendants claimed ownership of the suit property by adverse possession and also claimed easementary right.

(iii) Learned Trial Court is framed issued at Exhibit 26. Plaintiffs

examined plaintiff No.1 Deelip s/o Tulshiram Gomare at Exhibit 28 and relied upon various documents. Defendants examined Limbraj Jambhale, Sub Divisional Engineer at Exhibit 22. The learned Trial Court decreed the suit directing defendants to hand over possession of the suit property to the plaintiffs, with further direction to pay Rs.7500/- per month towards damages from the date of filing of the suit till the possession is so handed over. Being aggrieved by the said judgment Regular Civil Appeal No.53/2017, was preferred by the defendants, which came to be dismissed on 11/09/2020 by confirming the order passed by Trial Court.

3. Learned AGP submits that the learned Trial Court as well as learned First Appellate Court have failed to take into consideration the fact that there was no agreement indicating license much less gratuitous license issued by the plaintiffs in favour of the defendants for permissive and temporary use of suit property. It is submitted that in absence of any such agreement it was not open for the Trial Court to decree the suit and direct handing over of the possession of the suit property to the plaintiffs. It is also submitted that the both Courts below have failed to consider the issue of adverse possession as well as easementary right claimed by the defendants in the suit property. With regard to the damages, it is submission of the learned AGP that there is no documentary evidence led by the plaintiffs in order to ascertain the

amount of damages and hence, on these amongst one grounds substantial question of law arises for entertainment of the present appeal.

4. From perusal of the record it is clear that the ownership of the plaintiffs over the suit property is not in dispute. The dispute revolves around the issue as to whether there was any permissive temporary possession handed over by the plaintiffs to the defendants as a gratuitous licensee and as to whether on termination of the license whether the defendants have any right to retain possession of the suit property. In this regard it would be material to note that plaintiffs by examining Deelip plaintiff No.1 have proved the contents of the plaint. He reiterated the oral agreement between the parties whereby the suit property was permitted for temporary use thereof by defendant No.1. It is further claimed by him that it was free of charges, fees, rent etc. In this regard evidence on record clearly shows that witness of defendant No.1 had admitted that in the year 1983 possession of the suit property was given to the defendant No.1 by the plaintiffs. Thus, the case of the plaintiffs gets fortified with this admission. Once the plaintiffs have discharged the initial burden to prove that by virtue of oral license the temporary use of the suit property was allowed to the defendant No.1, the onus shifts on the defendants to prove otherwise. Defendant No.1

could not lead any evidence in order to show as to how it secured the possession of the suit property if not handed over by the plaintiffs pursuant to the oral agreement. The oral license and permissive possession of the suit property therefore is clearly established. Plaintiffs have further led evidence in the form of notice dated 05/12/2014 and acknowledgment at Exhibit 41 indicating that the plaintiffs have specifically revoked the oral license in favour of the defendant No.1. Defendant No.1 has failed to respond and comply with the said notice. Thus, defendants have failed to show any right, title and interest in the suit property after the termination of the license by the owner, in order to retain possession thereof.

5. The defendants claimed adverse possession of the suit property. Hon'ble Apex Court in case of *Vidya Devi vs. The State of Himachal Pradesh & Ors., 2020 (2) SCC 569* has clearly held that the Government cannot claim adverse possession of the property of any citizen of the country. Even otherwise in view of the admission of witness of the defendant No.1 that the possession was handed over by the plaintiffs to the defendants, the possession of defendants is permissive in nature. In view of these facts and law claim of adverse possession cannot sustain. With regard to the claim of the easementary right, such right cannot be claimed after having lost any right to occupy property. Both Trial Court

and Appellate Court, have aptly dealt with both questions and this Court finds no reason to cause interference therein.

6. On the point of damages granted by the Trial Court at Rs.7500/- per month to the plaintiff till the possession of the suit property is handed over is concerned, it is the contention of the defendants that the plaintiffs have failed to prove the damages by leading documentary evidence. This is not the case wherein the amount of damages is decided by the Trial Court in absence of any evidence of whatsoever nature. The oral evidence of the plaintiffs is duly taken into consideration by the Trial Court. Merely because the document is not produced, that may not become sole ground to reject assessment unless it is shown that the same is unjust and unreasonable and hence not sustainable. Plaintiffs have specifically deposed about the suit property being situated in the area surrounded by hospital, schools, residential premises etc. There is no denial of the said fact. The construction of the store room / shed indicates the commercial potential of the suit property. Plaintiffs have further claimed that the suit property would fetch Rs.25000/- per month. There is no suggestion as to even approximately what rent would fetch in area. Learned Trial Court after rightly taking into consideration the facts and circumstances of the case has arrived at a finding of determining the amount of damages at the rate of Rs.7500/- per month. Having regard

to the fact that about 4000 sq.ft. area was occupied by the defendants since 1983 without any fees, charges etc. Having regard to all these facts, this Court finds no perversity in the finding recorded by the learned Trial Court determining the amount of damages at rate of Rs.7500/- per month.

7. In order to entertain an appeal under Section 100 of the Code of Civil Procedure the appellants needs to make out a substantial question of law. In the facts and circumstances of the case and in view of the discussion made in above this Court finds no substantial question of law being involved in this appeal. This Court finds no perversity in the findings recorded by the learned Trial Court which are confirmed by the learned First Appellate Court in order to cause interference in the impugned judgment and orders. Hence, appeal stands dismissed. Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp