



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 383 OF 2024

Tulsiram Narayanrao Bedarkar
VERSUS
Suresh Bapurao Shikare And Others

.....
Mr. Sunil B. Kakde, Advocate for Applicant
.....

[CORAM : S. G. CHAPALGAONKAR, J.]

DATE : 21st NOVEMBER, 2024

ORDER :

1. The present second appeal takes exception to judgment and order dated 15.06.2024 passed by the District Judge, Parbhani in Regular Civil Appeal No.33/2018 as well as the judgment and order dated 21.02.2018 passed by Civil Judge, Junior Division, Selu, District Parbhani in Regular Civil Suit No.76/2011.

2. The appellant/original plaintiff filed Regular Civil Suit No.76/2011 contending that his father namely Narayan Bedarkar was tenant of grandfather of defendants No.2 and 3 in suit shop. They possessed tenanted suit shop for more than 55 years. They regularly paid rent to the grandfather of defendants No.2 and 3. After the father of plaintiff, he continued with the business. On 15.11.1992, plaintiff paid the

property tax to the Municipal Council in respect of the suit property. According to plaintiff, he became legal and lawful owner of the suit property. He has registered his shop under the Bombay Shop Act, 1948 and running tailoring business with help of ten sewing machines. The plaintiff has also installed electric meter and paying the charges. The plaintiff continued his visible, exclusive and hostile possession since long. His name is appeared in the possession column of property tax register. The defendants had sufficient knowledge about ownership and possession of the plaintiff, however, defendants No.2 and 3 without any right entered their names in the Municipal record and also trying to dispossess plaintiff. Accordingly on 17.07.2011 cause of action arose to file present suit seeking declaration of ownership and possession of suit property on the basis of adverse possession so also declaration that the sale deed bearing No.2956 dated 16.12.2010 executed by defendants No.2 and 3 in favour of defendant No.1 is null and void, and not binding on right of plaintiff over the suit shop.

3. The defendant No.1 filed written statement, so also counter claim and refuted case of plaintiff. He contends that plaintiff was the tenant of father of defendants No. 2 and 3.

After his demise, plaintiff became a tenant of defendants No.2 and 3. After death of father, defendants Nos.2 and 3 transferred suit property in his favour vide registered sale deed dated 16.12.2010. His name is entered in mutation record as well as Municipal Council. As he acquired ownership and title of the property, defendant No.1 requested the plaintiff to vacate the suit shop, however, he refused. Initially, for 5-6 months after registration of sale deed, the plaintiff paid the rent to defendant No.1. Thereafter, he stopped the payment and he was in arrears of rent of 19 months till February, 2013. Therefore, defendant No.1 claimed relief of possession of suit premises and decree towards recovery of arrears of rent of Rs.20,900/- for 19 months @ Rs.1,100/- per month.

4. The trial Court, framed issues and recorded evidence of the parties. The trial Court concluded that plaintiff failed to prove that he acquired title/ownership over the suit shop by way of adverse possession, and further recorded finding that plaintiff is tenant of defendant No.1, and refused plaintiff's claim for grant of decree of perpetual injunction. Similarly, dismissed counter claim filed by defendant No.1, however, first appellate Court, while dealing with appeal filed by plaintiff,

concurred with finding of trial Court that plaintiff failed to prove title by adverse possession and allowed Regular Civil Appeal No.60/2019, filed by defendant No.1 against rejection of counter claim, observing that the sale deed bearing No.2956 dated 16.12.2006 executed by defendants No.2 and 3 in favour of defendant No.1 entitles him to recover possession of the suit shop being owner.

5. Mr. S.B. Kakde, learned advocate appearing for the appellant submitted that there is voluminous evidence to depict long standing possession of the plaintiff and his father over the suit shop. The plaintiff's name has been recorded in the Municipal register as possessor and plaintiff had also paid taxes. He would, therefore, submit that plaintiff has perfected his title on the basis of his possession. Therefore, sale deed executed by defendants No.2 and 3 in favour of defendant No.1 would not be binding on his right. Similarly, no title would pass in favour of defendant No.1 based on such illegal sale deed.

6. At this stage, the reference can be given to certain observations of the Supreme Court as regards the concept of adverse possession. The Supreme Court of India in the case 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."

7. Keeping in mind aforesaid principles of law, if the facts of the present case are considered, it can be seen that, father of the plaintiff was inducted as a tenant and he continuously paid rent towards occupation of the said premises. Obviously, the entry of plaintiff's father in suit shop was permissive in nature. Reverting back to the pleadings in the plaint, it can be observed that plaintiff has not specified date when his possession over the suit property became adverse. Apparently, plaintiff claimed his possession over the suit shop after death of his father, but the particulars of the date of death of father are absent in the plaint.

8. The thrust of plaintiffs claim appears to be on receipt dated 15.11.1992 regarding deposit of property tax with Municipal Council. Secondly, name of his father shown in the column of tenant in property tax register. However, perusal of documents would show depict that ownership of Tatya Parppa Mahajan, and thereafter, Suresh and Ramesh S/o Gangadharappa Mahajan i.e. defendants No.2 and 3 has been shown. It is true that the electricity bills and the property tax

register of Municipal Council show possession of plaintiff or his father, however, merely on the basis of continuous possession, the plaintiff cannot succeed to claim ownership by way of adverse possession. There must be some evidence to show that his possession was hostile to the real owner and amounted to a denial of his title to the property. There must be animus of the person claiming adverse possession. There must be convincing material to show that there was a denial of title of real owner, with notice to him regarding such hostility. It is trite that the person claiming title by way of adverse possession would not have equality in his favour, but he will have to establish his case with impeccable evidence indicating his adverse possession informing the the real owner of his hostile animus.

9. In present case, circumstances on record prove that plaintiff was in possession, but merely on the basis of deposit of the Municipal Tax or the payment of electricity charges, the plaintiff cannot be said to acquired title by way of adverse possession. The trial Court as well as appellate Court have concurrently recorded finding of facts based on appreciation of evidence that plaintiff failed to prove his hostile possession to be the true owner, by which he could acquire possessory title.

No fault can be found in the aforesaid finding of facts. No perversity is discernible in the approach of fact findings Courts. Both the Courts have correctly applied the principles of law governing the concept of adverse possession.

10. So far as the counter claim is concerned, the appellate Court uphold the title of defendant No.1 on the basis of sale deed dated 16.12.2010 executed by defendants No.2 and 3. The title of defendants No.2 and 3 cannot be disputed once it is held that the plaintiff failed to establish his case by adverse possession. Therefore, on the basis of sale deed executed by defendants No.2 and 3 in favour of defendant No.1, he has derived the title over the property. The appellate Court accepted the case of defendant that defendant No.1 required the suit property for bonafide purpose i.e. expansion of his business. Such finding is based on the appreciation of the evidence. Consequently, no fault can be found in the impugned judgment. No substantial question of law arises in second appeal. Consequently, Appeal stands dismissed.

[S. G. CHAPALGAONKAR]
JUDGE