



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

**SECOND APPEAL NO. 749 OF 2016
WITH
CIVIL APPLICATION NO. 14404 OF 2016**

Tatyaba Thakaji Shelke,
Age : 54 Years, Occ. Service,
R/o. Babhulgaon Tq. Rahuri,
District. Ahmednagar.

..Appellant
(Orig. Defendant)

VERSUS

Sau. Hausabai Dada Waghmode,
Age : 60 Years, Occ. Agriculture,
R/o. Babhulgaon Tq. Rahuri,
District Ahmednagar.

.. Respondent
(Orig. Plaintiff)

...

Shri. Sudhir K. Chavan, Advocate for the Appellant
Shri. Rajendra S. Kasar, Advocate for Respondent.

....

**CORAM : SANDIPKUMAR C. MORE, J.
DATE : September, 13, 2024**

ORDER

1. Heard rival submissions on admission.
2. The present appellant, who is original defendant in Regular Civil Suit No. 19 of 2005, has challenged the judgment and decree passed by the learned District Judge-3 and Additional Sessions Judge, Ahmednagar i.e. the learned First Appellate Court in Regular Civil Appeal No. 316 of 2012 dated 10.08.2016. Under the aforesaid judgment and decree, the learned First Appellate Court has confirmed the judgment and

decree passed by the learned trial Court i.e. learned Civil Judge, Junior Division, Rahuri in the aforesaid Regular Civil Suit No. 19 of 2005.

3. The facts giving rise to the present Second Appeal are as under :-

The present respondent, who is the original plaintiff, has preferred Regular Civil Suit No. 19 of 2005 against the appellant/defendant for possession of the suit property i.e. 3 R land at North-West corner of the land Gut No. 48/1, totally admeasuring 40 R at Babulgaon Taluka Rahuri, District Ahmednagar, by contending that since the appellant was her relative, she had permitted him to reside on the suit property in good faith. The defendant, by constructing shed on the suit property, started residing there and also obtained electricity supply under consent letter from the respondent/plaintiff. However, he misused the said consent letter and mutated his name in the Gram Panchayat record in respect of that suit property and started claiming ownership of the same. Thus, the respondent/plaintiff issued notice dated 09.12.2004 for vacating the suit premises to the appellant. Since the appellant did not vacate the suit premises, the aforesaid suit was filed.

4. On the contrary, the appellant/defendant resisted the

suit on the ground that he had purchased the suit property from the plaintiff for a consideration of Rs. 3,000/- on 06.03.1991 by way of sale deed executed by respondent. According to him, since then he is in peaceful possession of the land and thereby became owner of the same. He also claimed that even after that, the respondent/plaintiff had obtained amount of Rs. 10,000/- for selling adjoining 5 R land to the suit land, but to avoid the repayment of said amount, she came with a false suit.

5. The learned trial Court after framing issues, conducted the trial and decreed the suit of the plaintiff on 17.03.2012. The appellant though challenged the said judgment and decree in RCA No. 316 of 2012, but failed in the same and hence this Second Appeal.

6. The learned counsel for the appellant/defendant vehemently argued that both the learned Courts below failed to properly consider the document dated 06.03.1991 under which the appellant had purchased the suit property. According to him, the learned trial Court should have impounded the document or alternatively should have used the same for giving finding on the issue of adverse possession. He pointed out that, both the learned Courts below definitely

erred in not framing proper issues on adverse possession and limitation and wrongly interpreted the document dated 06.03.1991. Thus, according to him, the non framing of such issues and absence of findings thereon is the substantial question of law involved in this appeal. He also submitted points for arguments and relied on the following citations :-

- (I) Hon'ble Apex Court in the case of **Rana Vidya Bhushan Singh Vs. Ratiram** (*LAW (SC)1969-1-37*)
- (II) Hon'ble Apex Court in the case of **Vasantiben Prahladi Nayak and Others Vs. Somnath Muljibhai Nayak & Others** (*(2004) 3 Supreme Court Cases 376*)
- (III) **Jayasing Narayan Tupe Vs. Sambhaji Baburao & Others** (*2013 (4) Bom.,C.R. 844*)
- (IV) **Rangammal Vs. Kuppuswami & Another** (*2011(4) Bom.C.R. 32*)
- (V) The Hon'ble Apex Court in the case of **S.Shivraj Reddy (died) Through his legal heirs and another Vs. S.Raghuraj Reddy and Others** (*SLP (Civil) No(s) 4237 of 2015*)
- (VI) **Santosh Anant Raut Vs. Pukharaj Chogmal Rathod and another** (*2011 (Supp.)Bom.C.R.1*)

7. On the contrary, the learned counsel for the respondent strongly opposed the submissions made on behalf of the

appellant/defendant and supported the judgments of both the learned Courts below. According to him, the document dated 06.03.1991 was an unregistered sale deed which could not be used for any purpose, including the collateral purpose, being an inadmissible document. He pointed out that the appellant/defendant miserably failed to show that he had acquired legal title of the suit property and therefore, theory of 'permissive possession' upheld by the both the learned Courts below, is appropriate. According to him, there was no necessity of framing issue of limitation as the learned trial Court properly discussed the issue of adverse possession though specific issue is not framed. He also relied on the following citations :-

- (I) The Hon'ble Apex Court in the case of **Chatti Konati Rao and others Vs. Palle Venkata Subba Rao** in (*Civil Appeal No. 6039 of 2003 dated 07.12.2010*).
- (II) **Parshram Kashiram Sakhare Vs. Vastalabai Harshay Sharma and Another** Bombay High Court Nagpur Bench (*Second Appeal No. 81 of 1988 dated 20.08.2003*).
- (III) **Dilipkumar Bherumal Kucheriya Vs. Subhashchandra Nemichand Kucheriya and Others** (*Bombay High Court in Second Appel No. 746 of 2008*).

8. It is extremely important to note that the

respondent/plaintiff has come with a case of 'permissive possession' according to which she had given possession of the suit property to the appellant/defendant to reside as he was her relative. As such, the possession of the suit property is admittedly with the appellant/plaintiff since 1991. Further, it is not in dispute that name of appellant has been entered into the record of rights maintained by the Gram Panchayat. However, it is settled that the entry in revenue record of rights, does not confer any ownership to a person in absence of any registered sale deed. Here in this case the document of ownership as claimed by the appellant/defendant is in fact an unregistered sale deed dated 06.03.1991. The learned counsel for the appellant submits that the learned trial Court definitely erred in not impounding the said document by sending it to the Collector. For that purpose he relied on the judgment of this Court in the case of **Jayasing Narayan Tupe Vs. Sambhaji Baburao & others** (supra) wherein it is observed that the learned trial Court is under obligation to send document for impounding to the Collector and merely by recording such document being improperly stamped would not suffice the purpose. However, the learned First Appellate Court has answered this aspect by referring the case of **Subrava M.N. Vs. Vittala M.N. reported in (2016) 0**

Supreme Court 511 wherein it is mentioned that the document which is not registered as required under law would be inadmissible in evidence and cannot be produced and proved under Section 91 of the Evidence Act. As such, it cannot be said that both the Courts below have erred in not appreciating the said document properly. Moreover, this Court in the case of **Parshram Kashiram Sakhare Vs. Vastalabai Harshay Sharma and Another** (supra) has observed that a document required to be registered under the law, is not only inadmissible in the evidence, but it cannot be read even for collateral purpose. Thus, it is abundantly made clear that no title of the suit property is acquired by the present appellant/defendant under the aforesaid unregistered sale deed. Thus, on failure of establishing the title over the suit property, the appellant has definitely failed to protect his possession.

9. The learned counsel for the appellant then argued that since the appellant is in possession of the suit property from 1991, he has become owner of the suit property by way of adverse possession. However, as per the observations of this Court in **Parshram Kashiram Sakhare Vs. Vastalabai Harshay Sharma and Another** (supra) a permissive possession cannot be converted into adverse possession,

unless it is proved that the person in possession acquired an adversary title to the property to the knowledge of true owner for a period of 12 years or more.

10. In the instant case, the respondent/plaintiff since beginning is claiming that she had given possession of the suit property to the appellant/defendant only for residing there since he was her relative. Moreover, the learned trial Court though not framed specific issue in respect of adverse possession, but has discussed the said aspect by relying on the observations of Orissa as well as Kolkata High Courts. When the appellant has definitely failed in establishing his ownership on the basis of so called unregistered sale deed (Exh.34) then he cannot get any ownership right in the suit property by way of adverse possession. Further, it is also observed in the case of **Chatti Konati Rao and Others Vs. Palle Venkata Subba Rao Civil Appeal No. 6039 of 2003** by the Hon'ble Apex Court that mere unobstructed possession howsoever long does not necessarily mean that it is adverse to the true owner. In the instant case on failure of establishing the case of purchase of the suit property, the possession of the appellant over the same appears to be a 'permissive possession' and therefore, the appellant cannot claim ownership on the basis of his long standing possession. As

such, there is no need of framing any issue on adverse possession as it has been successfully answered by the learned trial Court.

11. The learned counsel for the appellant then raised an issue of limitation and submitted that he is in possession of the suit premises since 06.03.1991 on the basis of document (Exh.34) and the suit filed on 14.01.2005 is therefore, barred by limitation. Admittedly, there is no issue of limitation framed either by the learned trial Court or by the learned First Appellate Court, but it is clearly evident that the suit is filed when the appellant/defendant failed to vacate the suit land even after receiving notice from the respondent/plaintiff dated 09.12.2004 and therefore, the respondent/plaintiff was constrained to file suit for possession. Thus, when the plaintiff has established the case of 'permissive possession' then the suit filed by her on the aforesaid cause of action is well within limitation, especially when the appellant could not establish his title on the basis of so called unregistered sale deed or by way of adverse possession.

12. Therefore, considering all these aspects, no substantial question of law as raised by the appellant/defendant is involved in this appeal and therefore, the Second Appeal

stands dismissed along with pending Civil Application No. 14404 of 2016. The interim relief granted if any, shall also stand vacated. The appeal is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

LATER ON :

13. After pronouncement of the order, the learned counsel for the appellant submits that the interim relief granted in respect of maintaining status quo by the parties during the pendency of this appeal, be continued as the appellant wants to challenge the order passed today.

14. Learned counsel for respondent strongly opposed the request made by the learned counsel for the appellant.

15. However, considering the fact that the interim relief was granted by this court before passing this order, it stands continued for further period of four weeks only.

(SANDIPKUMAR C. MORE, J.)

YSK/