



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.342 OF 2024
WITH
CIVIL APPLICATION NO.12132 OF 2024

Sahebrao Shrirang Kale,
age 74 years, Occ. Agriculture,
Resident of Umbargaon, Tq. Shrirampur,
District Ahmednagar.

Appellant.
(orig. plaintiff)

Versus

1. The Collector, District Ahmednagar.
2. Additional Collector and President of
Khandakari, Jamin Vatap Samitee,
District Ahmednagar.
3. The Head of Committee and Deputy Collector,
(Land Acquisition), Dist. Ahmednagar.
4. The Sub Divisional Officer,
Shrirampur, Dist. Ahmednagar.
5. The Tahsildar, Shrirampur,
Dist. Ahmednagar.
6. The Circle Officer, Belapur (Talathi Office)
Shrirampur, Dist. Ahmednagar.
7. Maharashtra State Farming Corporation,
(Khandakari Shetkari Vatap Vibhag),
Gandhiwadi, Tq. Shrirampur,
Through and for Estate Manager,
Mr. Ashok Ramchandra Kolhe,
age 64 yrs, Occ. Service,
R/o Tilak Nagar Mala, Tq. Shrirampur,
Dist. Ahmednagar.

Respondents.
(Orig. Defendants)

...

Mr. R.A. Tambe, advocate for the appellant.

Mr. D.B. Bhange AGP for respondents Nos.1 to 6-State.
Mr. P.V. Barde, advocate for respondent no.7 Caveator.

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : November 25, 2024

JUDGMENT :-

1. Present second appeal filed by original plaintiff takes exception to the judgment and decree dated 12.8.2024 passed by the District Judge-2, Shrirampur, District Ahmednagar in R.C.A. No.2 of 2022 thereby reversing the judgment and decree dated 16.11.2021 passed by the Civil Judge S.D., Shrirampur in R.C.S. No.10 of 2015.

2. Mr. Rahul Tambe, learned advocate appearing for the appellant submit that the land survey no.20/2 admeasuring 9 acres 1 R situated at Umbargaon, Tq. Shrirampur (now block no.29) was originally owned by Bajirao Rakhma Kale and Makha Mukinda Kale. Plaintiff's father was adjacent land holder in block no.28. Owners of land block no.29 had leased out the land to Maharashtra Sugar Mills Limited, Tilak Nagar. However, it remained uncultivated. The plaintiff's father took over possession of 1 A 11 R portion from the land gat no.29 on

10.10.1955 and continued his open, uninterrupted and peaceful possession.

3. Block no.29 was declared as surplus land under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short the said act). The State Government took possession of it from sugar mills and allotted the same in favour of the defendant no.7 i.e. Maharashtra State Farming Corporation. However, father of the plaintiff continued in possession of the area to the extent of 1A 11 R without any obstruction even from defendant no.7. He developed the Gayran land by leveling and bunding, dug well of 40 x 40 feet, installed electric engine in the year 1968 and watered crops. He spend huge efforts and money in developing the land. Even, plaintiff's father constructed a tenement. Till death of plaintiff's father in the year 2000 he continued in possession. Thereafter, plaintiff is in possession and enjoyment of the property. Plaintiff came to know that defendants were intending to allot the land from block no.29 to original land lords. He made written communication as regards to his continuous possession for more than 30 years. The Deputy Collector, who is responsible for allotment of surplus land

made inquiry through the Revenue Officers. Consequently, a report was submitted accepting possession of plaintiff over the suit property. Defendant no.2, in fact proposed to make allotment of land excluding the property in possession of plaintiff. However, defendant no.7 issued notice dated 26.5.2014 to plaintiff asking for removal of the encroachment from the suit land. Plaintiff asserted his adverse possession and consequently filed suit seeking relief of declaration of ownership based on adverse possession and perpetual injunction against the defendants. The defendants refuted plaintiff's claim contending that block 29 admeasuring 9 A 1R is approved and proposed for allotment to original land lord and his legal heirs. However, it has been encroached by the plaintiff and he is liable to be evicted. Defendant no.7 also filed written statement raising various objections.

4. Trial Court framed issues, recorded evidence of parties and concluded that plaintiff proved his adverse possession and perfected title over the suit land. Consequently, granted relief of perpetual injunction. However, appellate Court reversed the decree holding that possession of the plaintiff cannot be given status of adverse possession as there is

no documentary evidence indicating long standing and peaceful possession of plaintiff over the suit property.

5. Mr. Tambe, learned advocate appearing for the appellant invites attention of this Court to the findings recorded by the Trial Court and also copies of correspondence between the revenue officials. He would invite attention of this Court to the communication dated 21.9.2013 issued by the Manager of Respondent/Corporation accepting long standing possession of the plaintiff. Similarly, he points out the communication dated 28.12.2013 and 3.6.2014 between Deputy Collector, Ahmednagar, Tahsildar, Shrirampur and Corporation to contend that long standing possession of the plaintiff has been acknowledged by the Authorities in their correspondence. He would therefore submit that plaintiff has perfected title by way of adverse possession. In support of his contentions, he relies upon observations of the Supreme Court of India in case of **Government of Kerala and another Vs. Joseph and others reported in 2023 SCC Online SC 961.**

6. Per contra Mr. P.V. Barde, learned advocate appearing for respondent no.7-caveator submits that plaintiff could not establish his hostile possession over the suit property.

He would invite attention of this Court to observations from judgment of Appellate Court that there is absolutely no document certifying possession of plaintiff over the suit land in exclusion of title of the Corporation. He would submit that plaintiff will have to establish continuous unobstructed possession with hostility to title of defendant no.7/Corporation. Mr. Barde would submit that large stretches of land were put in possession of farming Corporation after Government took over possession of excess land from the owner under the provisions of the said Act. Property was maintained by Farming Corporation with aid of few officers. If plaintiff had occupied certain portion of the land without knowledge to the Farming Corporation, in absence of hostility to title of the plaintiff, he cannot perfect his title over the suit property. He would therefore supports judgment of the appellate Court.

7. Mr. Barde, in support of his submissions places reliance on a judgment of the Supreme Court of India in case of **M. Radheshyamlal Vs. V. Sandhya and another** reported in **2024 AIR (SC) 1595**.

8. Having considered submissions advanced and after going through the reasoning adopted by the fact finding Courts, it can be observed that there are conflicting findings as to the crucial issue regarding acquisition of the title by plaintiff based on adverse possession. The Trial Court approved plaintiff's case regarding long standing uninterrupted possession relying upon the correspondence between officers of respondent no.7-Corporation so also between Revenue Officers, wherein there is stipulation accepting possession of plaintiff over the suit property and existence of well and tenement. The Trial Court found aforesaid evidence sufficient to uphold plaintiff's claim regarding perfecting of title by way of adverse possession.

9. Per contra, Appellate Court discarded case of plaintiff on the ground that there is no documentary evidence depicting possession and enjoyment of property by the plaintiff. The official correspondence relied upon by the plaintiff is merely in form of their opinion that plaintiff must be in possession of suit property since long.

10. The law on the point of adverse possession has been well settled. In the present case, plaintiff is seeking declaration of ownership based on adverse possession. It is not the case where plaintiff is raising a plea of adverse possession by way of defence. In that view of the matter, observations of the Supreme Court in case of **Annasaheb Bapusaheb Patil Vs. B.B. Patil** reported in 1995 AIR SC 895 and **T. Anjanappa and others Vs. Somlaingappa and another** reported in (2006) 7 SCC 570 would be relevant. In case of **Annasaheb Patil** (supra), Supreme Court observed thus :-

“13. 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.”

11. In case of **T. Anjanappa and others** (supra), the Apex Court has held as thus :-

“13. 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."

12. Similarly, in case of **D.N. Venkatarayappa And Ors. vs. State Of Karnataka And Ors.** reported in (1997) 7 SCC 567, Supreme Court of India observed as under :-

"Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person, who claims adverse possession should show : (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."

13. Same principle of law is approved recently by the Supreme Court of India in case of **M. Radheshyamlal Vs. Sandhya and another (supra).**

14. Taking into account aforesaid position of law, it can be observed that plaintiff has specifically pleaded that on 10.10.1955 his father occupied the property and since then continuously used the same as a 'true owner'. He has also made certain development to make it sustainable for agriculture.

15. Admittedly, there is absolutely no record to substantiate claim of the plaintiff that he occupied suit property in the year 1955. As per the practice prevailing name of the plaintiff's father could have been noted at least in the possession column of the revenue record. Although, plaintiff claims that since 1968 he is using electric motor, no evidence to that effect is produced to depict use of the electric motor in relation to the suit land. In case of long standing and open possession, some traces of evidence in initial revenue record could have been easily gathered; but the plaintiff failed to bring any such evidence. The thrust of the plaintiff's claim is on certain statements in communication of the Revenue Officers. Those communications are pertaining to period from 2013 onwards, wherein, there is mention that plaintiff is in possession as encroacher, however, revenue record shows that

name of the Corporation as possessor since 1965-1966. Crop inspection report indicates possession of Corporation. The stipulations in correspondence are in nature of opinion of officer that probably suit land was not taken in possession by the Corporation and same has been possessed by plaintiff's father. However, opinion expressed by the Revenue Officer in their communication is not supported by any documentary evidence. The statements in correspondence are without foundation.

16. The Appellate Court also considered oral evidence of the plaintiff and witness. However, declined to rely upon statement of plaintiff's witness regarding his possession as said witness is neighbor and oral evidence is not sufficient. No fault can be found in the approach of Appellate Court in this regard. Assuming that plaintiff's father and thereafter plaintiff was in possession of the land, it is difficult to accept that such possession was open to the notice of respondent no.7/Corporation and hostile to its title, Appellate Court rightly observed that if plaintiff was in possession, he will have to be treated as rank trespasser. No explanation is coming forward as to why plaintiff or his father never made any

attempt to secure entries in the Government record regarding possession and enjoyment of the suit property that has been owned by the Corporation. The plaintiff appears to have concealed fact of his possession and ensured that Corporation shall not get notice of his occupation over area from ownership of the Corporation.

17. As observed by the Supreme Court of India, it was necessary for the plaintiff to establish that his title was hostile to the real owner and amounted to denial of his title to the property. Further, it was for the plaintiff to bring on record the animus amounting to denial of title of true owner. Mere long standing possession would not be sufficient to make out adverse possession. The classical requirement of acquisition of title by adverse possession is denial of true owner's title, which must be peaceful, open and continuous. Hostility must be capable enough by the parties interested in property. Plaintiff failed to bring on record any such circumstance, by which his hostility or animus against the true owner can be discerned. Since finding arrived at by the Appellate Court is based on appropriate of oral and documentary evidence, in light of pleadings of parties so also based on correct appreciation of

law regarding adverse possession, no substantial question of law arises for consideration in this second appeal. Hence, second appeal stands dismissed. No costs. Pending civil application, if any, also stands disposed off.

18. At this stage, Mr. Rahul Tambe, learned advocate appearing for the appellant submits that, during pendency of the suit as well as appeal, appellant was enjoying possession of the suit property. He submits that the appellant/plaintiff wish to approach the Supreme Court of India, therefore, he submits that interim protection be extended to the possession of the plaintiff over the suit property.

19. Considering the submissions advanced, it would be appropriate to grant interim protection to the possession of the plaintiff for a period of eight (8) weeks from today. In that view of the matter, execution of the decree be kept in abeyance for a period of (8) Eight weeks from today.

(S. G. CHAPALGAONKAR)
Judge

...

aaa-