

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 326 OF 2019
WITH
CIVIL APPLICATION NO. 300 OF 2019
IN
SECOND APPEAL NO. 326 OF 2019**

Subhash Veerbhadra Lohar (Since deceased)
Ravindra Veerbhadrappa Dixit
Aged 61 years, Occu: Business

Residing at Samarth Nagar,
At Post Akkalkot, District- Solapur.
Also having address at CTS No. 2680,
Station Road, Near Nagarparishad Office,
Akkalkot, At Post Akkalkot District – Solapur .. Appellant

Versus

1. Murtuz Asif Kazi
Age 42 years, Occu: Service,
r/o. Behind Khaja Daud Darha,
Station Road, Akkalkot, District-Solapur.

2. Johara Abdulwafa Kadri
Age 40 years, Occu: Household,

3. Gaus Mohammad Asif Kazi
Age 42 years, Occu: Service,
Res. No.2 & 3 both r/o. Behind Khaja
Daud Darga, Station Road, Akkalkot,
Dist. Solapur.

4. Jinnat Sohal Patel
Age 24 years, Occu: Household,
r/o Hajrat Papa Patel, Patel Galli,
Bruhnpur, Taluka Akkalkot, Dist. Solapur.

5. Anjum Jamal Pirzade
Age 22 years, Occu: Household
r/o. C/o. Shabbir Pirzade (Chhapal
Shop), Maulali Chowk, Akkalkot, Dist. Solapur.

6. Kausalyabai Chandrakant Gavali,
Age 48 years, Occu. Not known,

7. Rajendrakumar Chandrakant Gavali
Age 38 years, Occu. Not known,

8. Balu Chandrakant Gavali
Age 33 years, Occu. Not known,

9. Krishnabai Golrao Chande
Age 40 years, Occu. Household,

10. Nilabai Narsingrao Gavali
Age 53 years, Occu. Household,

11. Kisan Narsingarao Gavali
Age 29 years, Occu. Not Known

12. Sangeeta Jagannath Ghavalkar
Age 34 years, Occu. Household

13. Ranjana Prabhuram Kshirsagar
Age 33 years, Occu. Household,

All adults, Respondent Nos. 6 to 13
R/o. Mujawar Galli, Station Road,
Behind Khaja Darga, Taluka Akkalkot,
District – Solapur.

At Present R/o. House No. 9/906,
Shah Bazar, Gulbarga, Karnataka State.

.. Respondents

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Mr. Himanshu Balkrishna Takke, for the Appellant.

Mr. Bhushan Walimbe, a/w. Mayank Tripathi for Respondent No.1.

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CORAM: SANDEEP V. MARNE, J.

DATE : 23rd FEBRUARY, 2024.

ORAL JUDGMENT:-

1. By this Appeal, Appellant challenges judgment and order dated 18th September, 2018 passed by the District Judge, Solapur and dismissing Regular Civil Appeal No. 262 of 2012 and confirming the Decree dated 30th March, 2010 passed by the Civil Judge, Senior Division, Solapur in Regular Civil Suit No. 259 of 2007.

2. The Plaintiff filed the Suit challenging the Sale Deed executed by Defendant Nos. 2 to 9 in favour of Defendant No.1 on 18th September, 2007 and sought a declaration that the same was not binding on him. Plaintiff's challenge to the Sale Deed was premised on his claim of adverse possession over the land which was sold by the Sale Deed dated 18th September, 2007. The Trial Court, however, proceeded to dismiss the Suit by judgment and order dated 30th March, 2010 holding that Plaintiff could not prove his claim of adverse possession in respect of land sold by the said Sale Deed dated 18th September, 2007. It appears that Defendant No. 1 filed a Counter Claim seeking recovery of possession of two sheds admeasuring 10x10 and 10x20 from the Plaintiff. While dismissing the Plaintiff's Suit, the Trial Court has partly allowed the Counter Claim of Defendant No.1 and has directed Plaintiff to

handover possession of two sheds admeasuring 10x10 and 10x20 to Defendant No.1. The First Appellate Court has confirmed the Decree of the Trial Court.

3. I have heard Mr. Takke, the learned counsel appearing for the Appellant/Plaintiff and Mr. Walimbe, the learned counsel appearing for Respondent No.1.

4. After having considered the submissions canvassed by the learned counsel appearing for parties and on perusal of the Plaint filed by the Appellant/Plaintiff, it is seen that the Plaintiff repeatedly pleaded in the plaint that possession of half portion of the property falling in the share of Dhrupadabai has been in possession earlier with Tulsabai and later with him on account of permission granted by owners. Plaintiff has admitted in the Plaint itself that Dhrupadabai permitted Tulsabai to possess the Dhrupadabai's share in the property. In paragraph 5 of the plaint, Plaintiff further admitted that after purchase of Tulsabai's share by Plaintiff's father in the year 1987, Plaintiff continued to be in occupation of land falling in Dhrupadabai's share with permission of the owner. Plaintiff thus approached the Trial Court with the clear case that he was occupying the suit property with permission of the original owners. It is well settled position of law that a person in permissive possession cannot raise claim of adverse possession. On account of such admissions given by Plaintiff in his plaint, his claim for adverse possession has rightly been rejected by the Trial Court and the First Appellate Court.

5. Mr. Takke would seek to question the validity of the Sale Deed dated 18th September, 2007 on account of absence of permission from Government Authorities for execution of such Sale Deed. It appears that in respect of the Plaintiff's own Sale Deed executed in the year 1987, the permission was subsequently obtained in the year 2002. Therefore, it is not that prior permission is needed for execution of the Sale Deed. In any case, it is incomprehensible as to how Plaintiff, who admittedly does not claim title in respect of the suit property, could raise the issue about the validity of the Sale Deed on account of failure to procure permission.

6. Mr. Takke would seek to criticize the judgment of the First Appellate Court on account of its failure to answer each of the five points determined by it for consideration. According to Mr. Takke, perusal of the judgment of the First Appellate Court would indicate that only issue Nos. 1 and 2 answered and there is no answer to point Nos. 3, 4 and 5. I have gone through entire judgment of the First Appellate Court. Issue point No.3 is about claim of Plaintiff for adverse possession. The First Appellate Court has recorded findings in paragraph 51 of the judgment, rejecting Plaintiff's claim for adverse possession. Therefore, it cannot be said that point No.3 has not been answered. Point No.4 is about entitlement of Decree No.1 to recover possession. This aspect is discussed by the First Appellate Court in paragraphs 17 to 20 of the judgment. Point No.4 was about need to interfere in the order passed by the Trial Court, discussion for which is to be found throughout the judgment. In my view, therefore, the point of failure to deal with points determined by the First Appellate Court is totally misplaced.

7. After considering overall conspectus of the case, I am of the view that no serious infirmity can be traced in the order passed by the Trial Court and the First Appellate Court. There is no question of law, much less any substantial question of law, involved in the present Appeal.

8. Second Appeal is accordingly rejected.

9. After the judgment pronounced, Mr. Takke would request for continuation of the Interim Order for a period of eight weeks.

10. Considering the case pleaded by the Plaintiff in the plaint, and the findings recorded in the Order, I am convinced that no case is made out by the Plaintiff for retention of possession. The prayer for continuation of the Interim Order is therefore rejected.

SANDEEP V. MARNE, J.