



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.684 OF 2017
WITH
CIVIL APPLICATION NO.1430 OF 2017

Eknath Pandharinath Gadakh
(Since Decd. Thr. Lrs.)

...Appellants

V/s.

M/s. S. D. Builders & Developers
Through its partners.

...Respondents.

Mr. Prabhanjan Gujar i/b Mr. Sachin Pawar for the Appellant.
Mr. Sandeep D. Shinde for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 8th JANUARY, 2024.

P. C.:-

1. Heard Mr. Prabhanjan Gujar for the Appellant and Mr. Sandeep D. Shinde for the Respondent.

2. Being aggrieved by the Judgment of the 1st Appellate Court dated 12th October, 2015 dismissing the Appeal and confirming the findings of the Trial Court, the Appellant -legal heirs of Original Defendant No 1 has preferred the present Second Appeal.

3. Briefly stated that facts are that R.C.S No.697/2012 was instituted by the plaintiff seeking recovery of possession of the suit property described therein against the Defendants. The case of the plaintiff is that the suit property was owned by one Kashinath Gangadhar Khandve and 14 others which was purchased by Bhagirath Gaud and Surajmal Gaud and revenue records were accordingly mutated in the name of Gaud. It is pleaded that by registered Sale Deed dated 30th December 2000 the property was purchased by the Plaintiff and mutation Entry No.44017 was effected in favour of plaintiff. That, the defendant No.1 has without any right in the property described in paragraph No.1b taken possession of the said property and has handed over the same to the defendant No.2 on leave and license basis. It was pleaded that defendant No.1 and 2 have instituted Regular Civil Suit No.153/2003 against the plaintiff and the partners of M/s Gaud Construction which is pending and according to the pleadings in the said RCS No.153/2003 defendant No.1 has purchased the property by way of a agreement for sale from the partner of M/s. Gaud Constructions. It was pleaded that the property never belonged to M/s.Gaud Constructions and there are no revenue entries in favour of M/s. Gaud Constructions. That the defendant No.1 has not acquired any right, title and interest in respect of the suit property on the basis of the unregistered agreement for sale.

4. The Suit came to be resisted by defendants claiming that the suit is not maintainable as previous RCS No.153/2003 was pending adjudication. It was further pleaded that by virtue of an agreement for sale dated 31st March 1984, the property has been handed over in possession of defendant No.1. It was contended that prior to the purchase of the property by the Plaintiff, there was permanent structure erected with the permission of the planning authority and the name of Defendant No 1 appears in the assessment records. That, the suit property is in uninterrupted possession of the Defendant No 1 since the last thirty years and the Defendant No 1 had become owner by adverse possession.

5. With the above pleadings, the parties went to trial and the Trial Court framed and answered the Issues as under:

ISSUES	FINDINGS
1. Do plaintiffs prove their title over suit property ?	In the affirmative.
2. Do defendants prove that suit property 1B is owned by defendant No.1 ?	In the negative.
3. Do plaintiffs prove that possession of defendants over the suit property 1B is illegal ?	In the affirmative.
4. Alternatively, do defendants prove that they become the owner of suit property 1B by adverse possession ?	In the negative.

5. Whether plaintiff is entitled for vacant possession of suit property 1B ?	In the affirmative.
6. What order and decree ?	As per final order.

6. By judgment dated 4th April 2013, the Suit was decreed and the defendants were directed to put the plaintiff in possession of the suit property specifically described in paragraph No.1B of the plaint. As against this Civil Appeal No.140/2013 was instituted by the defendants which came to be dismissed.

7. Mr. Gujar, learned Counsel for the Appellant would submit that in the written statement, the Defendants had specifically set up the case of ownership by virtue of Agreement for Sale dated 31st March, 1984 and has thereby cast a cloud over the Respondent No 1's title. According to him, once there is cloud over the Respondent No 1's title, it was necessary for Respondent No 1 to amend the plaint and seek declaration of ownership and in the present case, the suit for possession without seeking the relief of declaration of title was not maintainable. He would submit that the substantial question of law on the maintainability of the suit arises in the present case. In support thereof, he relies upon the decision of the Apex Court in the case of *Anathula A. Sudhakar vs. P. Buchi Reddy (Dead) by*

Lrs. And Ors., (2008) 4 Supreme Court Cases 594 and in particular paragraph No.13 which lays down the general principles as to when a civil suit for permanent injunction would lie and when it is necessary to file a Suit for declaration and/or possession with injunction as a consequential relief. He points out that the Apex Court has held that where the suit has been filed believing that the defendant is a wrongful claimant without title and a suit for injunction is filed and in such a suit defendant discloses in his defence the detail of right or title claimed by him which raises serious dispute or cloud over the plaintiff's title then there is a need for the plaintiff to amend the plaint and convert the Suit into one for declaration.

8. He would submit that in the present case, defendant has come with a defence that there is previous agreement of sale of the year 1984 which has been executed in favour of defendant No.1 by M/s. Gaud Constructions and in the alternative the defendants have claimed title by way of adverse possession.

9. Considered the submissions and perused the record.

10. The Plaintiff has filed the suit for possession on the strength of the registered Sale Deed dated 30th December, 2000 executed in its favour

by the owners of the suit property i.e. Bhagirath and Surajmal Gaud, whose names have been mutated in the revenue records. Pursuant to the execution of the registered sale deed, the name of the Plaintiff is mutated in the revenue records. There is admittedly no challenge by the Defendants either to the sale deed of the year 2000 or the revenue records reflecting the name of the Plaintiff as the owners. It is also not disputed that the Defendant No 1 has not filed any suit seeking specific performance of the Agreement for Sale dated 31st March, 1984.

11. The Trial Court has framed the issue of title as well as the ownership of Defendant No 1. On basis of title claimed in the suit both parties have adduced evidence. The plea of ownership of the Defendant No 1 on the basis of the Agreement for Sale of the year 1984 has been negated by the Trial Court as the agreement was not proved. The Trial Court further held that the Defendant No 1 has failed to bring on record any evidence to prove that M/s Gaud Constructions was having any title over the property. The Trial Court considered the revenue records and the registered document of the year 2000 which evidenced the ownership of the Plaintiff over the suit property and held the Plaintiff as owner of the property. The Trial Court negated the issue of ownership of the Defendant No 1 by way of adverse possession as the Defendant No 1 failed to prove “animus

possidendi”.

12. Now coming to the issue as to whether the Defendant has raised a cloud over the title of the Plaintiff which requires the Plaintiff to seek relief of declaration of title. As indicated above, the suit for recovery of possession has been sought on the basis of title, which the Plaintiff has established by oral and documentary evidence. In the written statement, the Defendant has pleaded that by an agreement of sale dated 31st March, 1984, the Defendant No 1 has been put in possession of the property as owner. It was further claimed that the Defendant No 1 has become owner by adverse possession. There are no pleadings as to the ownership of M/s Gaud Constructions over the suit property particularly when in the plaint there is specific pleading that the suit property was not owned by the partner of M/s Gaud Construction. For the Defendant No 1 to raise a serious cloud over the title of the Plaintiff, it was necessary for the Defendant No 1 to plead the necessary facts as to the ownership of the suit property vis a vis M/s Gaud Construction and to prima facie show title over the suit property. Merely by pleading possession on the basis of an unregistered agreement for sale of the year 1984, it cannot be said that a serious dispute has been raised over the Plaintiff's title which source is admittedly a registered Sale Deed by the rightful owners.

13. The Apex Court in the case of ***Anathula Sudhakar (supra)*** has held that the relief of declaration will have to be sought only where the title of Plaintiff is under a cloud. In my opinion, considering that the right claimed was under an unregistered agreement for sale executed by an entity who had no right in the suit property, there was no serious cloud on title of the Plaintiff to force him to seek relief of declaration of title in instant case which is based on the strength of registered sale deed.

14. Pertinently, the written statement does not raise the objection of maintainability and no issue on maintainability is framed. The Appellate Court has concurred with the findings of the Trial Court. From the findings of the Trial Court as well as Appellate Court it does not appear that any document was produced to even *prima facie* indicate the possession of the defendant based on title. On the other hand, it appears that the claim of the defendant was on the basis of adverse possession which has been rightly dealt with by both the Courts. The question of law agitated before this Court is on the maintainability of the suit without seeking declaration of ownership. Pertinently, the Memorandum of Appeal does not set forth the question of law urged by the learned Counsel for the Appellant. No other point has been agitated before this Court.

15. In view of the discussion above, there is no substantial question of law arising in the present Appeal. Appeal stands dismissed.

16. In view of dismissal of the Appeal, Civil Application does not survive and is accordingly disposed of.

17. At this stage, Learned Counsel for Appellant seeks stay of the pending execution proceedings for period of four weeks. Learned counsel appearing for Respondent submits that proceedings before Executing Court are listed on 15th February 2024 and till then no steps will be taken in the execution proceedings.

(SHARMILA U. DESHMUKH, J.)