



MIN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 481 OF 2017
WITH
CIVIL APPLICATION NO. 877 OF 2017

Sandesh Gajanan Vichare

... Appellant.

Versus

Dilip Chintaman Borkar

... Respondent.

Mr. Machhindra A. Patil, for the Appellant.

Coram : Sharmila U. Deshmukh, J.

Date : APRIL 2, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 28th September, 2016 passed by the Appellate Court in Civil Appeal No.54 of 2010 dismissing the Appeal confirming the judgment of the trial Court dated 30th September, 2012 passed in Regular Civil Suit No.4 of 2002, the original defendant is before this Court. For the sake of convenience, the parties are referred to by their status before the trial Court.

2. Regular Civil Suit No.4 of 2002 was instituted by the plaintiff seeking recovery of possession from the defendant after removal of the encroachment. The suit property was described as Gat Nos.352 and 356. It was contended that the defendant about 2 ½ years prior thereto had encroached upon Gat No.352 and constructed the shed. It

was contended that legal notice was issued on 16th January, 2001 to the defendant calling upon to remove the unauthorised shed. As the requisitions of the legal notice were not complied the suit came to be filed seeking recovery of possession.

3. The defendant resisted the suit by filing his written statement. It was contended that the defendant is in adverse possession of Gat No.352 from the last 15 years. It was contended that the defendant does not have any concern with suit Gat No.356. It was contended that he had constructed the poultry-shed and was in possession since 15 years and had taken electricity connection and was also paying the tax to the Village Panchayat. It was further contended that he had planted trees in Gat No.352 and on the remaining land there were Mango, Chikoo, Coconut plantations.

4. The parties went to trial. The Trial Court on consideration of the oral and documentary evidence decreed the suit directing the defendant to remove the encroachment of the poultry-shed constructed on Gat No.352 and to handover possession to the plaintiff. As against this, Civil Appeal No.54 of 2010 was instituted by the defendant. The Appellate Court on re-appreciation of evidence negated the issue of ownership by adverse possession. The Appellate Court held that apart from the bare words of the defendants, there is

no documentary evidence produced on record to show that he is cultivating the said land for more than 12 years. The Appellate Court observed that the absence of the defendant's name in the revenue record was sufficient to infer that his case of possession of more than 12 years is not acceptable. The Appellate Court further observed that there are no witnesses examined by the defendant to corroborate his possession of more than 12 years. As regards the documentary evidence in the form of assessment extract for the year 1999-2000 and the tax receipt of the year 1999, the Appellate Court held that the plaintiff had applied for measurement in 1999 and at that time the defendant had raised an objection and appears to have entered his name in the Village Panchayat record however, the said document will not create any right in his favour. As regards documents of electricity connection and light bills the same were not proved in respect of the suit property. The Appellate Court thus dismissed the Appeal.

5. Heard Mr. Machhindra A. Patil, learned counsel appearing for the Appellant.

6. Mr. Patil, learned counsel appearing for the Appellant would submit that the substantial question of law arising in the present case is the perversity in the findings of the Appellate Court. He submits that the defendant is in longstanding possession of Gat No.352 and in

support thereof has adduced oral evidence. He further submits that apart from the oral evidence sufficient documentary evidence has been produced in the form of the 7/12 extracts, extract of assessment list for the year 1999-2000, tax receipt for the year 1999-2000 as well as the receipt issued by Maharashtra State Electricity Board of December, 1996, April, 2000, electricity bill of December, 1998, receipt of March, 1999, electricity bill of May, 1999 and October, 2002 and the statement recorded by the TILR of the plaintiff and the defendant at the time of measurement on 15th October, 1996. He would further submit that the documentary evidence have not been rightly appreciated and as such interference is warranted in Second Appeal.

7. Considered the submissions and perused the record.

8. The fact that the plaintiff claims title by adverse possession indicates that the ownership of the plaintiff over the suit property is admitted by the defendant. Where a possessory rights as owner is claimed by the defendant, the burden is upon the defendant to prove his possession adverse to that of the owner and for the statutory period. In the present case, the trial Court and the Appellate Court on the basis of the oral and the documentary evidence have concurrently held that the defendant has failed to prove his title by adverse

possession. As regards the documentary evidence which has come on record, the judgment of the Court would indicate that as far as the electricity connections are concerned the same are not proved to be in respect of the suit property. As regards the cultivation it is held that if part of the Gat No.352 was being cultivated by the defendant for a period of more than 12 years, his name would have appeared in the revenue records. Admitted position is that no such document has been produced to show the cultivation by the defendant for a period of more than 12 years. The only documents of assessment extract of 2000 and a tax receipt of 1999 are held by Appellate Court to have been entered in name of defendant to which the defendant had objected.

9. It is well settled that longstanding possession would not result into a grant of possessory ownership unless it is shown that the possession is adverse possession to the true owner and for the statutory period. On the basis of the oral and documentary evidence there are concurrent findings that the adverse possession hostile to that of the owner for period of 12 years has not been proved. In exercise of powers under Section 100 of the Code of Civil Procedure, 1908, even erroneous findings of fact are not permissible to be corrected unless it is demonstrated that the findings are based on no evidence or that wrong inference has been drawn from proven facts

by applying the law erroneously. In the present case, the Appellate Court has rightly considered the evidence on record and it is not possible to re-appreciate the evidence and substitute a different view under Section 100 of the CPC.

10. As such, no substantial question of law arises in the present Appeal. Appeal stands dismissed. In view of the disposal of Second Appeal, Civil/Interim Application(s) taken out in this Appeal, if any, does not survive and same is disposed of.

[Sharmila U. Deshmukh, J.]