



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 386 OF 2017

Smt. Sakhubai Dhondiram Barkand and Ors.

... Appellants.

Versus

Shivaji Kashinath Barkand

... Respondent.

Mr. Nikhil Pujari i/by Mr. P.N. Joshi, for the Appellants.

Ms. Naina Boraste i/by Mr. G.R. Agrawal, for Respondent Nos.1 to 6, 8 to 10.

Coram : Sharmila U. Deshmukh, J.

Date : May 08, 2024.

P. C. :

1. Being dissatisfied by the judgment dated 31st July, 2015 passed by the Appellate Court dismissing the Appeal thereby confirming the dismissal of suit by the Trial Court, the original-Plaintiff is before this Court. For sake of convenience, the parties are referred to by their original status before Trial Court.

2. The facts of the case are that Regular Civil Suit No.82 of 2003 came to be filed seeking declaration of ownership in respect of the suit property and for possession and cancellation of the mutation entries. The case of the Plaintiff was that the suit property was purchased by Sadu Tukaram and Mahadu Tukaram in the year 1953 by way of registered sale-deed i.e. the predecessor of the Plaintiff and the Defendant respectively jointly. It was contended that after the consolidation scheme was implemented excess area was allotted to

the share of the Defendant whereas the Plaintiff was given lesser area. It was contended that the consolidation scheme was challenged before the Competent Authority and the Plaintiff succeeded in the Appeal. However, thereafter, Revision was filed before the Revenue and Forest Department, which was decided against the Plaintiff and the Writ Petition came to be filed before this Court, which was withdrawn with liberty to file a suit before the Civil Court and as such, the civil suit was filed for a declaration and ownership and possession.

3. The Defendants filed their written statement contending that the predecessor of the Plaintiff though had agreed to pay his half share of the sale consideration, however, at that point of time, the Mahadu was behind bars and therefore, no amount was paid. It was contended that the Plaintiffs are out of possession since the year 1960 and the suit property is in the Defendant's possession and they claim ownership by adverse possession. The Trial Court on the basis of evidence on record held that the Defendant has proved that since 1960 they are in possession of the disputed property to the knowledge of the Plaintiff and had set up title hostile to that of the Plaintiff in the year 1960 itself. The Trial Court held that the benefit of Section 14 of the Limitation Act, 1963 cannot be taken by the Plaintiff and dismissed the suit. As against this, Appeal came to be preferred by the Plaintiffs. The Appellate Court upon re-appreciation of the evidence confirmed the findings of the Trial Court and dismissed the Appeal.

4. Heard Mr.Pujari, learned counsel for the Appellants, Ms.Boraste,

learned counsel for Respondent Nos.1 to 6, 8 to 10..

5. Mr. Pujari, learned counsel appearing for the Appellant would submit that after 1960 when the rights of the Plaintiffs came to be affected, litigation was commenced by the Plaintiffs and before two Authorities the Plaintiffs had succeeded. He submits that it is only when the Revisional Authority passed an order against the Plaintiffs that the Writ Petition came to be filed before this Court which was withdrawn with liberty to file a suit and as such, the suit came to be filed in the year 2003. He submits that as the Plaintiffs were litigating in parallel proceedings, the period of 12 years provided under Article 65 of the Limitation Act will necessarily exclude the period of litigation which are being spent in prosecuting the parallel proceedings. He would further submit that the sale-deed shows joint purchase by the predecessor of the Plaintiffs and the Defendant, and thus, he cannot be non-suited as he has a right in the suit property.

6. *Per contra*, Ms.Boraste, learned counsel appearing for the Respondent would support the judgment of the Appellate Court and would submit that on the basis of evidence which has come on record, the finding of adverse possession has been upheld by the Trial Court and the Appellate Court and this Court may not exercise jurisdiction under Section 100 of the Code of Civil Procedure, 1908 interfere with the concurrent findings.

7. Considered the submissions and perused the record.

8. The facts are undisputed that since the year 1960, the Plaintiffs

have been out of possession and Defendants have denied the Plaintiffs title and set up a title hostile to that of the plaintiffs which is evident from the litigation which was commenced by the parties since the year 1960. It has also come on record on the basis of evidence that since the year 1960, the Defendants are in possession of the suit property and the title of the Plaintiffs has been disputed by denying the right of possession to the Plaintiffs. The possession was thus shown to be adequate in continuity, in publicity and in extent to show that it is possession adverse to the owner as per the settled position of law. As despite being co-owners, ouster has been conclusively established from the evidence on record, the suit if filed within 12 years from the date when the possession has become adverse would be saved from bar of limitation. In the present case, admittedly the suit has been filed beyond the period of 12 years. The submission that parallel litigation was being conducted is, no answer as the limitation cannot be arrested once the period of limitation starts running.

9. The provisions of Section 14 of the Limitation Act, 1963 which provides for exclusion of time of proceedings bonafide in Court without jurisdiction will not assist the case of the Plaintiffs, it is not the case that the parties were litigating bonafide in wrong forum. Even if, the consolidation proceedings were being challenged it was incumbent upon the Plaintiffs to adopt appropriate proceedings lest the period of limitation expires. In the present case, it is not as if the proceedings challenging the consolidation scheme were being prosecuted in Court/Tribunal which did not have jurisdiction. As such,

the provisions of Section 14 of the Limitation Act, 1963 will not assist the case of the Plaintiffs.

10. As regards the submission that liberty was granted by this Court to file suit, it appears that the petition came to be withdrawn seeking liberty to file a suit. While granting liberty, this Court in exercise of powers under Article 226 / 227 of the Constitution of India cannot extend the period of limitation provided in the Limitation Act, 1963.

11. In light of the above, no substantial question of law arises, the Appeal stands dismissed.

[Sharmila U. Deshmukh, J.]