



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO.594 OF 2017

<u>Appellant :</u> (Plaintiff on RA)	:	Tarachand s/o Keshaorao Rokde Aged about 66 years, Occu. Pvt. Service, R/o Bhutiya Darwaja, Circle No.3, Mahal, Nagpur. – Versus –
<u>Respondents :</u> (Ori. Deft. No.1 on RA)	: 1.	Ramchandra Keshaorao Rokde, Aged about 50 years, Occu. Service, R/o Circle No.3, Bhutiya Darwaja, Mahal, Nagpur.
(Ori. Deft. No.2 on RA)	2.	Smt. Sheela w/o Kewalram Rokde (Dead), Aged about 52 years, Occu. Household, R/o Circle No.3, Mahal, Bhutiya Darwaja, Nagpur.
(Ori. Deft. No.3 on RA)	3.	Vinod s/o Kewalram Rokde, Aged about 32 years, Occ. Service, R/o Bhutiya Darwaja, Circle No.3, Mahal, Nagpur.
(L.Rs. of Ori Deft. No.4 on RA)	4.	Avinash s/o Kewalram Rokade (Dead), through L.Rs.
	4(a)	Smt. Archana Avinash Rokade, Aged about 33 years, Occu. Service.
	4(b)	Ku. Mansi Avinash Rokde, Aged about 12 years minor through natural guardian mother Smt. Archana Avinash Rokde Nos.4(a) and 4(b) r/o New Shukrawari, Bhudiya Darwaja, Nagpur.
(Ori. Deft. No.5 on RA)	5.	Ramesh Nathuji Dhage (Dead), through L.Rs.
(L.Rs. of Ori. Deft. No.5 on RA)	(I)	Smt. Mira Rameshrao Dhage (Wife), Aged about 62 years, Occ. Housewife, R/o Pipla Road, Dhage Banglow,

Chikhli Layout, Nagpur, Distt. Nagpur.

- (II) Smt. Sangita w/o Sanjay Raut (Daughter),
Aged about 44 years, Occ. Housewife,
R/o Sagar Park, RH 62, Flat No.5, G Block,
Shambhaji Nagar, Near Siddhivinayak
Temple, City Chinhwad, Pune.
- (III) Smt. Seema Chandrakant Ingole (Daughter),
Aged about 43 years, Occ. Housewife,
R/o Plot No.17, Hudkeshwar Road, Near
Guru Mauli Super Bazar, Ingole Nagar,
Hudkeshwar (Bdu), Nagpur – 440034.
- (IV) Mr. Dhannjay Rameshrao Dhage (Son),
Aged about 42 years, Occ. Business,
R/o Pipla Road, Dhage Banglow,
Chikhli Layout, Nagpur.
- (V) Mr. Vikas Rameshrao Dhage (Son),
Aged about 39 years, Occ. Business,
R/o Pipla Road, Dhage Banglow,
Chikhli Layout, Nagpur.

(Ori. Deft. No.6 on RA)

- 6. Govind Nathuji Dhage,
Aged about 56 years, Occ. Service,
R/o Circle No.3, Bhutiya Darwaja, Mahal,
Nagpur.
- 7. Chakradhar s/o Nattuji Dhage (Dead),
through L.Rs.

(L.R. of Ori. Deft. No.7
on RA)

- 7(a) Smt. Chandrakala w/o Chakradhar Dhage,
Aged about 58 years,
R/o Circle No.3, Bhutiya Darwaja, Mahal,
Nagpur.
- 7(b) Atul s/o Chakradhar Dhage,
Aged about 33 years,
R/o Circle No.3, Bhutiya Darwaja, Mahal,
Nagpur.
- 7(c) Praveen s/o Chakradhar Dhage,
Aged about 32 years,

R/o Circle No.3, Bhutiya Darwaja, Mahal,
Nagpur.

7(d) Gauri d/o Chakradhar Dhage,
Aged about 32 years, Occ. Household,
R/o Dighori, Juna Naka, Vaibhav Nagar, in
the house of Madhukar Khawas, Nagpur.

(Ori. Deft. No.8 on RA)

7(e) Sonali d/o Chakradhar Dhage,
C/o Fanendra Wankhede, Ratan Plaza,
Flat No.412, Near Railway Station,
Santra Market, Nagpur.

(Ori. Deft. No.8 on RA)

8. The Collector, Nagpur.

Mr. S.S. Deshpande, Advocate for the Appellant.
Mr. R.B. Bomewar, Advocate for Respondent No.1.
Mr. R.D. Dhande, Advocate for Respondent No.5(I) to 5(V)

<u>CORAM</u>	:	<u>M.W. CHANDWANI, J.</u>
<u>RESERVED ON</u>	:	<u>5th JULY, 2024.</u>
<u>PRONOUNCED ON</u>	:	<u>1st OCTOBER, 2024.</u>

JUDGMENT:

Heard the learned Counsels for the parties.

02. The appeal challenges the judgment and decree passed by the learned trial Court in Special Civil Suit No.203/2004 and confirmed by the first appellate Court in R.C.A. No.358/2012.

03. One Kesharao Rokde had two wives viz. Janabai and Tulsabai. Vasanta was begotten from Janabai, whereas from Tulsabai, Kesharao had three sons viz. Tarachand, Ramchandra (Original Defendant No.1) and

Kewalram, who is husband of defendant No.2 and father of defendant Nos.3 and 4. One Tulsabai was treating Kesharao as her son and therefore, she gifted her house consisting of three portions house Nos.98, 98-A and 98-B in favour of Vasanta, the minor son of Kesharao.

04. It is worthwhile to mention here that Vasanta sold House No.98 to Ramesh Dhage i.e. respondent No.5, but since the possession of the said house was with Tarachand, Ramchandra, Kewalram and Tulsabai, therefore, Ramesh had filed a suit for possession against them bearing R.C.S No.21/1982. It is a matter of record that R.C.S. No.673/1983 was filed by Tarachand, Ramchandra, Kewalram and their mother Tulsabai claiming that the gift-deed executed by one Tulsabai in respect of the suit house consisting House Nos.98, 98-A and 98-B was in favour of Kesharao and not his son Vasanta. Since, Kesharao had bad vices, therefore, to protect the property, the gift-deed was executed in the name of Vasanta, a minor son of Kesharao. Tarachand and others in the said R.C.S. No.673/1983 had also prayed alternatively that they be declared as the owners of the suit house consisting of house Nos.98, 98-A and 98-B by way of adverse possession. The said suit came to be dismissed by the trial Court holding that the gift-deed executed in favour of Vasanta is valid and he became the owner of the suit property. The trial Court further held that Kesharao had no interest in the property and therefore, he could not have bequeathed the same under will in favour of

Tarachand, Ramchandra, Kewalram and Tulsabai.

05. Ironically, the said suit filed by Ramesh also came to be dismissed by holding that Tarachand, Ramchandra, Kewalram and Tulsabai got title in the suit property by way of will executed by Keshaorao bequeathing the suit property in their favour and even by holding that Keshaorao was the donee instead of Vasanta. Tarachand, Ramachandra, Kewalram and Tulsabai preferred an appeal against dismissal of R.C.S. No.673/1983, whereas Ramesh filed appeal against R.C.S. No.21/1982 before the learned District Judge. Both the appeals came to be dismissed.

06. After dismissal of the appeals by the learned District Judge, both Ramesh and Tarachand and others filed second appeals before this Court and this Court by order dated 05/12/2007 dismissed Second Appeal No.11/1996 filed by Tarachand and others and allowed Second Appeal No.440/1994 filed by Ramesh. Meanwhile, Special Leave to Appeal No.4243/2014 preferred by Tarachand and one also came to be dismissed by the Hon'ble Supreme Court vide its order dated 24/03/2022.

07. Now again, Tarachand filed another suit alleging that Vasanta was in possession of the portion of House No.98 which he vacated in the year 1973. From that date, Tarachand, Ramchandra and heirs of Kewalram i.e. defendant Nos.2 to 4 are in possession of House No.98. Thereafter, Vasanta

had also sold House No.98-A to Shobhabai, who in turn sold it to respondent Nos.6 and 7. However, the possession remained with Tarachand, Ramchandra and heirs of Kewalram. Vasanta sold House No.98-B to Ramesh Natthuji Dhage by sale-deed dated 04/12/1981. However, possession of the said house was with Tarachand, Ramchandra and Kewalram. Therefore, Ramesh filed R.C.S. No.21/1982 for possession, which came to be dismissed. Appeal bearing R.C.A. No.254/1984 preferred against dismissal of the suit also came to be dismissed. By another sale-deed dated 14/08/1981, Vasanta had also sold House No.98 to Ramesh, but possession of the said house was also with the appellant and respondent Nos.1 to 4. Ramesh did not file a suit for possession of the said property for 12 years. Since, the appellant and respondent Nos.1 to 4 were in possession of the suit house, the title of the said suit house became perfect in favour of the appellant and respondent Nos.1 to 4 by adverse possession. Therefore, the appellant sought a declaration that he and respondent Nos.1 to 4 became the owners of House No.98 by way of adverse possession and also sought injunction from disturbing their possession over the suit house. The trial Court dismissed the suit. The appeal preferred against the said decree also came to be dismissed. Feeling aggrieved with these, the present second appeal came to be filed.

08. Learned Counsel Mr. Deshpande appearing on behalf of the appellant submitted that in the earlier suit, the portion of compound was not

added in the suit property. This is a subsequent suit in respect of the said compound, which is marked as E.F.G.H. He further submitted that earlier R.C.S. No.21/1982 was only in respect of suit house No.98, 98-A and 98-B. The appellant and respondent Nos.1 to 4(a) and 4(b) are in continuous possession of the suit property since 1981, even prior to the sale-deed dated 14/08/1981 with the knowledge of hostile title of the plaintiff. Therefore, the Court ought to have considered this aspect and should have granted the declaration. Shobhabai, who purchased the property from Vasanta, sold it to defendant Nos.6 and 7 without giving possession of House No.98-A. Therefore, the possession of the appellant and respondent Nos.1 to 4(a) and 4(b) becomes adverse.

09. *Per contra*, learned Counsel Mr. Dhande appearing on behalf of respondent Nos.5(I) to 5(V) vehemently submitted that the suit property mentioned in the prayer clause is House Nos.98, 98-A and 98-B, which was also involved in the earlier litigation and the findings of the trial Court with regard to adverse possession are upheld by the appellate Court and therefore, the principle of *res judicata* will be applicable. Even otherwise, the possession on which the adverse possession is claimed, is repelled by the Courts. Therefore, a suit on the same premise, though on different portion of the land, does not sustain. Hence, he sought rejection of the appeal.

10. Perusal of the decree in earlier suit i.e. R.C.S. No.673/1983 goes to show that the suit property is a house consisting of House Nos.98, 98-A and 98-B, wherein the trial Court, by framing a specific issue, negated the claim of adverse possession made by the appellant and respondent Nos.1 to 4(a) and 4(b), which was upheld by the learned District Judge in R.C.A. No.290/1987. In the second appeal, no such substantial question of law touching to the issue of adverse possession has been framed. Thus, the findings recorded by the trial Court in R.C.S. No.673/1983 became final. Perusal of the prayer of the suit, in respect of which this second appeal is filed reveals that the appellant and respondent Nos.1 to 4 are praying that they be declared as the owners of House Nos.98, 98-A and 98-B, i.e. the same property which was involved in the earlier suit. Thus, the appellant is again asking for the same relief which has been denied by the all Courts including the Supreme Court in the earlier suit. Therefore, the submission of the learned Counsel for the appellant that the suit is only in respect of the courtyard of the house is misconceived. There is a reference of the courtyard in the prayer clause of the present appeal. Be that as it may, the appellant by way of filing the earlier suit i.e. R.C.S. No.673/1983, on one hand claimed ownership of the property on the basis of will executed by Kesharao and on the other hand by an alternative prayer claimed the ownership by adverse possession of the suit property which was agitated up to the Supreme Court till the year 2022 when the

Special Leave to Appeal came to be dismissed. In that scenario, it can be said that the appellant and respondent Nos.1 to 4(a) and 4(b) were pursuing the claim of ownership on the suit property till 2022. It is settled that the plea of adverse possession implies that someone else is the owner of the property. On one hand, the appellant and respondent Nos.1 to 4(a) and 4(b) have claimed that they are the owners of the suit property till 2022 and on the other hand, another suit has been filed in the year 2004 claiming title by adverse possession. Unless there is acceptance of ownership of the suit property by the appellant and respondent Nos.1 to 4(a) and 4(b), the plea of adverse possession cannot be taken. In absence of hostility to the true owner, the claim of adverse possession cannot be allowed. Thus, no substantial question of law arose in this appeal.

11. Hence, the appeal stands dismissed with costs.

(M.W. CHANDWANI, J.)

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