



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

SECOND APPEAL NO. 525 OF 2006

- APPELLANTS** : 1. Babybai w/o Athayya Mistri,
R/o c/o Athayya Mistri behind Cotton
Market, Amravati (Dead)
- Added as per order dated
22.02.2024
2. Gangabai Chaitnarayan Vishwakarma
(Dead) through LR's of A-2
- (a) Pramila Wd/o Rajesh Vishwakarma,
Age about 60 yrs. Occu- Household
- (b) Kishor s/o Chaitnarayan
Vishwakarma,
Age about 38 yrs, Occ- Business
- (c) Vivek s/o Chaitnarayan Vishwakarma,
Age about 36 yrs. Business
All r/o Near Water Tank, Zopadpatti,
Morshi, Th- Morshi, District Amravati
3. Mira w/o Shiokumar Vishwakarma,
Aged about 39 years,
Nos. 2 and 3 R/o Morshi near Water
Tank Zopadpatti, Morshi, Tq. Morshi
District : Amravati
4. Ku. Shobha d/o Motiramji Kanoje,
Aged about 37 years,
5. Ku. Rekha d/o Motiramji Kanoje
Aged about 35 years
- Deleted as per order
dated 06.12.2012
6. Bahinabai w/o Motirami Kanoje, Aged
70 yrs, R/o Tah. Chandur Bazar, Dist.
Amravati (Dead)
Nos. 4 and 5 R/o Malipura, Ward
No.4, Chandur Bazar, Tq. Chadur
Bazar, District Amravati

//VERSUS//

RESPONDENT : 1. Balu Nagorao Sultane,
Aged about 51 yrs. Cultivator,
R/o Chandur Bazar, Tq. Chandur
Bazar, District : Amravati

Mr. N.R. Saboo, Advocate for appellants.
Mr. K.B. Zinjarde, Advocate for respondent.

CORAM : **G. A. SANAP, J.**
DATED : **14th MARCH, 2024**

ORAL JUDGMENT

1. Heard finally with the consent of learned Advocates for the parties.

2. In this second appeal, the challenge is to the judgment and decree dated 08.02.2006, passed by the learned 1st Ad-hoc Additional District Judge, Achalpur, whereby the learned Ad-hoc Additional District Judge allowed the appeal filed by the respondent-original plaintiff and decreed the suit filed by the respondent for possession in respect of the suit property described in the plaint.

3. This appeal was admitted on 16.10.2007 on the following two substantial questions of law:-

(i) *Whether the facts considered by the first appellate Court in paragraph 12 of the judgment especially the sentence “Even the whole evidence of this witness nowhere shows that “suit premises” was given by his father to Motiram 40 years ago” is erroneous and illegal appreciation of evidence as the evidence of P.W.4 clearly shows that the suit premises (Wadgrast Jaga) was given by P.W. 4’s father to Motiram 40 years ago?*

(ii) *Whether the wrongful appreciation of the evidence of P.W. 4 vitiated the findings recorded by the first appellate Court?*

4. The facts giving rise to the substantial questions of law are as follows:-

The original defendant was Motiram Kanoje. He died during the pendency of the suit. The appellants are the legal heirs of the deceased Motiram. The respondent is the original plaintiff. In the suit, the respondent stated that he is the owner of the suit property described in paragraph Nos. 1 and 2 of the plaint. It is stated that he purchased the suit property from Dinkar Babarao Kadam for a total consideration of Rs.10,000/- (Rupees Ten Thousand Only) by registered sale deed dated 23.09.1986. He has

been in possession of the suit property since the date of the sale deed. After purchasing the suit property, he wanted to put fencing to the said property. The appellants have no right, title or interests over the suit property. They obstructed the use, occupation and possession of the respondent over the suit property. The respondent therefore filed suit, seeking decree of declaration and perpetual injunction.

5. The deceased defendants filed the written statement and opposed the claim. The appellants-legal heirs of the deceased defendant adopted the written statement filed by the deceased-defendant. They denied the claim of the respondent. According to the appellants the description of the suit property is not correct. According to them, the suit property is part of a plot described by letters ABCDEF in the plaint map. The entire plot was in possession of the deceased Motiram. The deceased Motiram had constructed structure on the plot. They contended that Motiram was doing work with Babarao Kadam. Babarao Kadam during his lifetime sold the entire plot to Motiram. The possession was handed over to Motiram 30 years back. The plot was transferred in lieu of service rendered by Motiram with Babarao Kadam. The appellants contended that they are the owners of the property.

They have further contended that by adverse possession they have become owner of the property. They have further stated that they have acquired permanent esamentary right over the suit property by prescription. Dinkar who is the son of Babarao had no right to transfer the suit property to the respondent.

6. Before the trial Court, the parties adduced the evidence. The respondent examined in all five witnesses. The appellants examined four witnesses. The learned Judge of the trial Court, on appreciation of the evidence, found that the respondent was not in possession of the suit property and ultimately dismissed the suit. The respondent filed the appeal in the District Court. The learned Ad-hoc Additional District Judge allowed the appeal and decreed the suit for declaration and permanent injunction. The appellants have come before this Court against the judgment and decree passed by the learned Ad-hoc Additional District Judge.

7. The substantial questions of law have been framed as above. I have heard Mr. N.R. Saboo, learned Advocate for the appellants and Mr. K.B. Zinjarde, learned Advocate for respondent.

8. Learned Advocate for the appellants submitted that the

concrete admission given in the cross-examination by Sahebrao Kadam (PW-4) admitting the possession of the deceased defendant over the suit property for the last 40 years has been misconstrued. Learned Advocate submitted that the admission was misinterpreted. It is pointed out that the admission was confined to possession of the part of the plot on the northern side of the suit plot. Learned Advocate submitted that the learned Ad-hoc Additional District Judge has failed to properly appreciate the evidence of Sahebrao Kadam (PW-4) and as such, the finding recorded by the Appellate Court in favour of the respondent has been vitiated. Learned Advocate submitted that the suit simplicitor for declaration and injunction was not maintainable because the appellants have established their possession over the suit plot. Learned Advocate submitted that, therefore, the judgment and decree passed by the First Appellate Court is required to be set aside and the judgment and decree passed by the trial Court is required to be restored.

9. Learned Advocate for the respondent submitted that there is ample evidence on record to prove that from the date of the execution of the sale deed of the suit plot in favor of the respondent by Dinkar Kadam, the real owner of the property, the

respondent has been in use, occupation and possession of the suit property. Learned Advocate submitted that the registered sale deed dated 23.09.1986 has been proved. Learned Advocate submitted that the vendor of the respondent Dinkar Babarao Kadam (PW-3) has been examined and in his evidence, he has categorically stated that on the date of the execution of the sale deed, the possession of the suit plot was handed over to the respondent and since then the respondent has been in possession of the same. Learned Advocate submitted that the heavy reliance placed by the appellants on the solitary as well as the ambiguous admission given by Sahebrao Babarao Kadam (PW-4) is totally misplaced. Learned Advocate submitted that, for the purpose of considering the said admission, the Appellate Court has considered and appreciated the entire oral and documentary evidence adduced by the parties. Learned Advocate submitted that in the revenue record, the entire plot has been recorded in the name of the predecessor in title of Dinkar (PW-3) and after his death, in the name of his legal heirs. Learned Advocate pointed out that the inconsistent pleas raised by the appellants as to the right, title and interests in the suit property are sufficient to reject their contentions. Learned Advocate submitted that the sale deed has to be given prime importance, as against the bare words of the appellants. Learned Advocate submitted that the

learned Ad-hoc Additional District Judge, on doing threadbare analysis of the evidence on record, has decreed the suit filed by the plaintiff.

10. On going through the evidence and the reasons recorded by the learned Additional District Judge, I am satisfied that the judgment and decree passed by the learned Ad-hoc Additional District Judge is sustainable. Motiram claimed the right over the property as an owner. He has also claimed right in the property as a tenant on the basis of municipal records. Motiram has also claimed the right in the property by way of adverse possession. He has also claimed the easementary right by prescription in the property. There is no document to show the title of the suit plot with the appellants. The appellants have contended that 40 years prior to filing of the suit the deceased Motiram was put in possession of the suit property. It is to be noted that the entire plot owned by Babarao Kadam, the predecessor in title of PW-3 and PW-4, is described by the letters ABCDEF in the plaint map. The respondent is claiming right over a part of the said plot described by the letters DCEG in the plaint map admeasuring 50 ft. x 40 ft. The respondent has not claimed any right over the remaining plot described by letters ABGEF. in the plaint map Exh. 75. The sale

deed of the suit plot executed in favour of the respondent by Dinkar Kadam (PW-3) is at Exh. 86. The boundaries of the plot purchased by the respondent can be seen from the sale deed. In this sale deed, it is mentioned that on the northern side of this plot there is open land of PW-3. It is seen on perusal of the plaint map at Exh. 75 that on the plot in the possession of the respondent, there is one structure. Similarly, on the portion of the plot in the possession of the appellants, there is one structure. As far as the part of the plot shown by letters ABGEF is concerned, the respondent is not claiming any right over it. Similarly, so far, the legal heirs of Babarao Kadam, who was the original owner of the said plot have not initiated any action against the appellants.

11. In the context of the above, it is necessary to mention that the Appellate Court has accepted the claim of the respondent that he is the owner of the suit property. The learned Appellate Court has negated the defence of ownership as well as ownership by adverse possession put forth by the appellants. This finding as to the ownership of the respondent over the suit property has not been challenged by the appellants. Similarly, the finding that they have failed to prove their ownership by adverse possession over the suit property has also not been challenged. Learned Ad-hoc

Additional District Judge, on appreciation of the evidence has held that suit property on the date of the sale deed has been in possession of the respondent and ultimately granted the decree.

12. On going through the evidence on record, I am satisfied that the admission of PW-4 has been properly appreciated by the learned Ad-hoc Additional District Judge. PW-3, who is the vendor of the respondent, has categorically stated that the appellants reside in a house towards the northern side of the suit property. In the sale deed, on the northern side of the suit plot, there is open plot of PW-2, PW-3 and PW-4. Bainabai (DW-1) is the wife of the deceased Motiram. She has admitted in her cross-examination that the land on which the house has been constructed is in her possession. The witness has improved her version and stated that the entire land is in her possession. She has further admitted that there is vacant land in front of her residential house. She has stated that said vacant land was earlier owned by deceased Babarao Kadam. She has admitted that after death of Babarao Kadam, his wife and children became owners of the disputed land. She has stated that she has no municipal record to show the construction of the house on the land. She has categorically admitted that she is not aware as to the owner of the

plot situated on the southern side of the house belonging to her. On the southern side of the plot there is a suit plot and on the southern side of the suit plot, there is a public road. Perusal of the admission given by PW-4 would show that he has admitted the possession of the appellants over a portion of the plot. This admission has to be considered in the totality of the evidence given by this witness. He has stated that his father allowed Motiram to occupy the land prior to 30 years. PW-3 and PW-4, who are the owners of the plot in the possession of the appellants have not initiated any action against the appellants. The sale deed of the suit plot was executed in favour of the respondent with the consent of PW-4. In the sale deed, there is a categorical statement as to the delivery of the possession of the suit plot to the respondent. The revenue record supports the contention of the respondent. In my view, therefore, the learned Ad-hoc Additional District Judge was right in granting the decree. I do not see any substance in the appeal. As such, I record my findings on point Nos.i and ii in the negative. As such, I conclude that there is no substance in the appeal.

13. The appeal is accordingly dismissed.

14. The Second Appeal stands disposed of. No order as to costs. Pending applications, if any stand disposed of.

(G. A. SANAP, J.)

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