



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

SECOND APPEAL NO. 404 OF 2003

1. Sakhubai alias Shakuntalabai wd/o Laxman Kale,
R/o Dalfail, Khamgaon, Tahsil – Khamgaon,
District – Buldhana.
2. Housabai Rangrao Kadam.
3. Rukhmabai wd/o Bajirao Kale.
4. Kamlabai wd/o Vithal Kale.
5. Shivaji s/o Vithal Kale.
6. Vishal s/o Vithal Kale.
7. Sambha s/o Vithal Kale.

Appellant nos. 5 to 7 are minor
by guardian mother Kamlabai wd/o Vithal Kale.

8. Shamrao Bajirao Kale.
9. Rajesh Bajirao Kale (dead),
through LRs
- 9(A). Sau. Asha Rajesh Kale,
aged about 54 years (wife).
- 9(B) Chetan s/o Rajesh Kale,
aged about 31 years (son).

Appellant nos. 9(A) and 9(B) are
R/o Galli No.2, Near Gajanan Maharaj Mandir,
Sarasvati Nagar, Amravati.

- 9(C) Smita Sandesh Khaire,
aged about 28 years, Occ. Housewife,

C/o Sandesh Khaire, Survey No. 53/3,
Nishant Vajan Kata, Maroti Nagar,
Wadgaon Sheri, Pune, City Poona (Maharashtra).

10. Kishor Bajirao Kale.

11. ~~Ram Bajirao Kale.~~
Deleted as per Court's order dated 15/10/2007.

12. Nita Mohan More.

Appellant nos. 2 to 8, 10 and 12 are
Residing near Nagar Parishad, Washim,
District – Washim.

13. Anita Ram Bondre,
Satifail, Khamgaon, District – Buldhana.

14. Rangrao Yeshwant Kadam (dead),
through LRs

14-A. Housabai Rangrao Kadam,
aged about 60 years.

14-B. Mohan Rangrao Kadam,
aged about 36 years.

Appellant nos. 14-A and 14-B are
R/o Behind Jain Mandir,
Near Nagar Parishad, Washim,
District – Washim.

15. Sakhubai Amruta Pawar.

15-A. Smt. Subhadrabai Kisan Dukre,
aged 69 years, R/o Near Nagar Parishad, Washim,
Tahsil and District Washim.
Amendment as per Court's order dated 25/11/2016.

16. Subhadra wd/o Kisan Dukare.

17. Sitabai Dattatraya Pagire.

Appellant nos. 15 to 17 are
residing near Nagar Parishad,
Washim, District – Washim.

...APPELLANTS

Versus

1. Chandrabhushan Ramakant Dube (dead),
through LRs
 - 1-i) Smt. Laxmibai wd/o Chandrabhushan Dubey (wife),
R/o Sawanga Jahagir, Post Tornala, Tahsil and
District – Washim.
 - 1-ii) Smt. Vishweswari w/o Shitalprasad Dubey,
C/o Ambikaprasad Tiwari, Near Prakash Talkies,
Fort Road, Gulbarga, Karnataka.
 - 1-iii) Ku. Vishwa Shitalprasad Dubey,
C/o Ambikaprasad Tiwari, Near Prakash Talkies,
Fort Road, Gulbarga, Karnataka.
 - 1-iv) Silla Prasad s/o Shitalprasad Dubey,
R/o C/o Ambikaprasad Tiwari,
Near Prakash Talkies, Fort Road,
Gulbarga, Karnataka.
 - 1-v) Yashwanti Vishwaraj Tiwari,
Near Prakash Talkies, Fort Road,
Gulbarga, Karnataka.
 - 1-vi) Vishlakshi Prayagrao Tiwari,
Near Prakash Talkies, Fort Road,
Gulbarga, Karnataka.
 - 1-vii) Madhumati w/o Santosh Mishra,
Near Gajanan Maharaj Mandir, Near Thakre Hospital,
Yavatmal, Tahsil and District – Yavatmal.
2. Chandrashekhar Ramakant Dube (dead),
through LRs

- 2-A. Sushila wd/o Chandrashekhar Dubey,
aged about 55 years.
- 2-B. Raju alias Shashikant s/o Chandrashekhar Dubey,
aged about 34 years,
Both R/o at Sawanga, Jahagir, Post – Tornala,
Tq. and District – Washim.
- 2-C. Ravikant s/o Chandrashekhar Dubey,
aged about 32 years,
R/o Near Post Office, Tarhala,
Tq. Mangrulpir, District – Washim.
- 2-D. Sau. Chandadevi Satish Mishra,
aged about 30 years,
R/o New Address – C/o. Satish Mishra,
Videographer, Near Jagdamba Mata Temple,
Behind Govt. Godown, Khadan,
Akola, Tq. and District – Akola.
- 2-E. Sau. Jyoti Ishwar Pande,
aged about 28 years,
R/o at and post Sawad,
Tq. Risod, District – Washim.
- 3. Prakash Chandrakant Dube.
- 4. Mohan Chandrakant Dube.

Respondent nos. 1, 3 and 4 are residing at
Sawanga Jahagir, Tahsil and District – Washim.

- 5. Taradevi Jagmohan Mishra,
C/o Jagmohan Bhagwanprasad Mishra,
House No. 15/6/157 Kolsewadi Near Udaybhan
Mandir Behind Usmaniya Hospital,
Hyderabad (Andhra Pradesh).
- 6. Meenadevi Raju Tiwari,
Residing at Khare Bawadi, Aurangabad.
- 7. ~~Premabai Chandrakant Dube,~~

~~Residing at Sawanga Jahagir,
Tahsil and District—Washim (dead).~~
**Deleted as per Registrar's order
dated 5/9/2013.**

8. Rajabhau Kisan Duratkar.

...RESPONDENTS

Shri J.J. Chandurkar, Counsel for the appellants.

Shri A.M. Kukday, Counsel for the respondents.

CORAM : ANIL L. PANSARE, J.

ARGUMENTS WERE HEARD ON : MARCH 19, 2024

JUDGMENT IS PRONOUNCED ON : MARCH 22, 2024

JUDGMENT :

Vide order dated 11/9/2003, the appeal has been admitted on the following substantial questions of law :

“(1) Whether mere production of Akhiv Patrika (exh.65) not being the document of title, entitles the plaintiff to the decree for possession against defendants?”

“(2) Whether the suit was not sustainable and was liable to be dismissed since mere entry in Akhiv Patrika was of no consequence for deciding the question of title and there being no other document on the basis of which the plaintiff sought to lay a claim to suit property ?”

2] Thereafter, on 19/4/2022, three more substantial questions of law were formulated, which read thus :

“1. Whether suit of the plaintiff was liable to be dismissed in the light of the relation of landlord-tenant not being proved coupled with the fact that the respondents had failed to place on record any document of title ?

2. Whether the title of the plaintiff stood extinguished inasmuch as the defendants were in occupation of the suit property for a long period of more than 12 years ?

3. Whether the Lower Courts have erred in granting a decree for possession based on the alleged title of the respondents/ plaintiffs in the absence of any pleadings in that regard by the plaintiffs ?”

3] As regards last question of law, I have gone through the averments made in the plaint. The respondents/plaintiffs have pleaded and called upon the appellants/defendants to give vacant possession by removing their structures. It cannot be, therefore, said that the Courts below have granted decree of possession without pleadings in that regard. The said question of law, therefore, does not arise for consideration.

4] The first two questions of law relate to proof of title over the suit property as belonging to the respondents/plaintiffs.

5] There is no dispute that except for Akhiv Patrika (Exh.65), there is no document to substantiate the respondents' title over the suit property.

6] The respondents/plaintiffs filed a suit for

declaration of ownership over the suit plot, possession, arrears of rent and damages. According to the respondents, the suit plot was an open plot bearing no. 1527 and was their ancestral property. The respondents came up with a case that the suit plot was let out to appellant no.1 (original defendant no.1) thirty-seven years ago on monthly rent of Rs.6/-. The suit has been filed in the year 1987. Appellant no.1 has inducted appellant nos. 2, 3, 14 and 16 (original defendant nos. 2, 3, 4, 6 and 7) (defendant no.7 is not added as party appellant) as sub tenants. Accordingly, their possession was said to be illegal, being sub tenants.

7] The respondents have further put-up a case that appellant no.1 has not paid rent from 1/11/1985 to 31/10/1986. A notice of ejectment was served upon him on 12/9/1986. The appellants were called upon to give vacant possession by removing their structures. Accordingly, the relief of declaration of ownership and possession has been sought.

8] Having heard both sides and having gone through

the evidence, there is absolutely no admissible evidence on the point of existence of tenancy between the parties. The respondents have not placed on record document of title in their favour. Despite such status, the Courts below have held that the respondents were owners of the suit property.

9] This finding is contrary to the well settled principles of law. The Hon'ble Supreme Court in the case of *Bhimabai Mahadeo Kambekar (Dead) Through Legal Representative Vs. Arthur Import And Export Company And Others [(2019) 3 SCC 191]* has noted that the it has consistently held that mutation of land in revenue records does not create or extinguish title over such land nor has it any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay land revenue in question.

10] As against, the learned Counsel for the respondents submits that revenue record do carry presumption of truth and, therefore, can be taken aid of to prove ownership. He has relied upon the judgment of the Supreme Court in the case of

Vishwasrao Satwarao Naik And Others Vs. State of Maharashtra [(2018) 6 SCC 580]. The Supreme Court was dealing with the provisions of The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (for short “Ceiling Act”). The issue involved was about exemption of land from ceiling. The appellants therein held huge tracts of land but did not file return under the Ceiling Act. The revenue authorities issued notice on the ground that the appellant was holding 468.088 acres of land. The appellant set-up a plea that he sold, gifted or transferred the lands prior to the enforcement of the Ceiling Act. There was, however, evidence that he was holding 333.14 acres of land. The Sub-Divisional Officer found that he was entitled to retain 114 acres of land for his family. The land admeasuring 44.51 acres was pot kharab land, i.e., land which is totally unfit for cultivation and, thus, excluded from the ceiling limit. The main ground urged was that in the earlier proceedings, the authorities held that pot kharab land was found to be 106.24 acres. It was pleaded that the revenue authorities have relied upon revenue entries with regard to classification of land but have not actually visited the land to

determine which land is cultivable and which is not. The Supreme Court held that in ceiling proceedings, it is a duty of the owner of the land to show which portion of his land is exempted from ceiling proceedings. The return filed on behalf of the appellant – owner indicated that he mentioned only 11.10 acres of land to be pot kharab. However, on the basis of revenue record, the Officers assessed the pot kharab land as 28.2 acres. The appellant did not plead any evidence in support. In this background, the Supreme Court held that presumption of truth is attached to the revenue record. The Court further noted that this presumption is rebuttable. Thus, the presumption of truthness attached to revenue record is not as regards ownership but is as regards the status of the property mentioned in the revenue record. This judgment, therefore, will be of no assistance to the respondents.

11] The learned Counsel for the respondents then invited my attention to another judgment of the Supreme Court in the case of *Vishwa Vijay Bharati Vs. Fakhrul Hassan And Others* [(1976) 3 SCC 642], wherein the Court in

paragraphs 14 and 15 has held as under :

“14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.

15. In Amba Prasad v. Abdul Noor Khan (1964) 7 SCR 800, it was held by this Court that Section 20 of the U.P. Act 1 of 1951 does not require proof of actual possession and that its purpose is to eliminate inquiries into disputed possession by acceptance of the entries in the khasra or khatauni of 1356 Fasli. While commenting on this decision, this Court observed in Sonawati v. Sri Ram (1968) 1 SCR 617 that the Civil Court in adjudging a claim of a person to the rights of an adhivasi is not called upon to make an enquiry whether the claimant was actually in possession of the land or held the right as an occupant : cases of fraud apart, the entry in the record alone is relevant. We have supplied the emphasis in order to show that the normal presumption of correctness attaching to entries in the revenue record, which by law constitute evidence of a legal title, is displaced by proof of fraud.”

12] The reason why the aforesaid finding was rendered by the Supreme Court finds place in paragraph 10 of the judgment, which reads thus :

“10. The decision of these appeals involves a very narrow question as regards the power of the High Court in second appeal. Section 100 of the Code of Civil Procedure provides to the extent material that an appeal can lie to the High Court from a decree passed in appeal by any court subordinate to it if the decision is contrary to law or to some usage having the force of law. The only question for decision before the High Court was whether the respondents were entitled to the protection of Section 20(b)(ii) of the U. P. Zamindari Abolition and Land Reforms Act, 1 of 1951. That section provides, in so far as material, that every person who was recorded as an occupant of any land in the khasra or khatauni of 1356 Fasli but who was not in possession in the year 1359 Fasli shall be called an 'adhivasi' of the land and shall be entitled to retain possession thereof. The names of the respondents were entered as occupants in the revenue record of 1356 Fasli but after considering the entire evidence, the District Court rejected those entries on the ground that they were fraudulent. Thus, the only question before the High Court was whether the entries on which the respondents relied were genuine or fraudulent. That is a question of fact and the High Court had no jurisdiction to set aside in second appeal the finding recorded on that question by the District Court.”

13] Thus, firstly, the revenue entries were tested in the light of U.P. Zamindari Abolition and Land Reforms Act. A provision was made that a person, who was recorded as an occupant of any land in Khasra or Khatauni of 1356 Fasli but who was not in possession in the year 1359, Fasli shall be called an ‘adhivasi’ of the land and shall be entitled to retain possession thereof. The Courts below found that the entries in

the revenue record were fraudulent. The finding to that effect was found to be recorded with sound reasoning. The Supreme Court criticized the approach of the High Court on the ground that it had no jurisdiction to set aside in second appeal the finding on question of facts because the High Court relied upon the revenue entries.

14] This judgment does not lay down that revenue entry is a document of title or can be taken aid of to prove the title. Thus, this judgment will also be of no help to the respondents.

15] Thus, the finding of the Courts below on proof of ownership by the respondents is contrary to the settled principles of law and is, thus, unsustainable. The respondents failed to place on record any admissible evidence to prove their ownership over the suit plot.

16] Consequently, the question that requires answer is whether in absence of document of title, the respondents/plaintiffs are entitled for decree of possession. As

stated above, the respondents have come-up with a case that appellant no.1 was inducted as tenant thirty-seven years ago. Thus, admittedly, the appellants were in possession for more than twelve years. The respondents failed to prove the relationship of landlord and tenant. The appellants, though have raised a defence that they are occupying the suit plot in the capacity as owner, they have also not placed on record any admissible document of title to substantiate their ownership over the suit plot. They had, however, as an alternate relief sought declaration of ownership by adverse possession.

17] Thus, what transpires is that the appellants were in continuous possession of the suit plot and the possession was adverse to the alleged title of the respondents. The respondents are intending to evict the appellants, who were in possession of the suit plot for more than twelve years.

18] The learned Counsel for the appellants has relied upon a judgment of the Supreme Court in the case of *Ravinder Kaur Grewal And Others Vs. Manjit Kaur And Others* [(2019) 8

SCC 729]. The law on adverse possession has been explained in detail and on the point of ousting the continuous possessor, the Supreme Court, in paragraph 62, has expressed its view as under :

“62. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years’ period of adverse possession is over, even owner’s right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner’s title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.”

19] Thus, the Supreme Court has held in clear terms that a person in continuous possession cannot be ousted by another person except by due procedure and law and once twelve years period of adverse possession is over, even owner's right to evict him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be.

20] In the present case, the respondents have failed to prove their ownership and, therefore, they cannot seek decree of possession against the appellants, who admittedly were in uninterrupted possession of the suit property for more than twelve years.

21] Thus, in absence of document of title, the respondents were not entitled to seek decree of possession against the appellants. In fact, in the given facts and circumstances of the case, the suit itself was not maintainable on the basis of mutation entry in Akhiv Patrika as regards ownership of the respondents. The first two substantial

questions of law are answered accordingly.

22] The next question that requires answer is whether the suit filed the respondents was liable to be dismissed in the light of the relationship of landlord-tenant not being proved coupled with the fact that the respondents have failed to place on record any document of title. To my mind, once the respondents failed to prove their ownership, there arises no question of existence of relationship of landlord-tenant between the appellants and the respondents. The question, therefore, does not arise for consideration.

23] The only question that remains is whether the tile of the respondents stood extinguished inasmuch as the appellants were in occupation of the suit plot for a long period of more than twelve years. In my view, the question of extinguishment of title would arise only when title is proved by the respondents. In the present case, the respondents have failed to prove their title over the suit plot and, therefore, there arises no question of extinguishment of their title merely

because the respondents filed a suit against the appellants. In fact, the learned Counsel for the appellants has invited my attention to the judgment and decree passed by the trial Court, the operative part of which reads as under :

“The suit is hereby partly decreed in the following manner :-

A. The defendants do deliver the vacant possession of the open plot marked by letters A B O P K-1 E-1 K-A attached with the plaint map, situated at Washim in ward no. 30 having sheet no.116 no. 1527 within three months to the plaintiff.

B. The defendants do pay the cost of the suit to the plaintiff and bear their own.

C. Decree be drawn accordingly.”

24] As could be seen, the trial Court has decreed the suit only to the extent of handing over vacant possession of the suit plot, despite, the respondents seeking relief of ownership over the suit plot. Thus, the trial Court has not granted decree of ownership in favour of the respondents. I am informed that the respondents have not challenged this finding. The finding, therefore, attained finality.

25] Thus, there is absolutely nothing on record to show

that the respondents have either valid document of title over the suit plot or have decree of ownership over the suit plot. In absence thereof, the question of extinguishment of title of the respondents does not arise.

26] Thus, what transpires is that the respondents filed suit for declaration and possession. They failed to prove ownership over the suit property. They are, therefore, not entitled to recover possession of the suit property. The suit itself is not maintainable for want of document of title in favour of the respondents. The Courts below have rendered a finding contrary to the well settled principles of law as discussed above. The judgments of the Courts below, therefore, are unsustainable.

27] Even the appellants have not placed on record any document showing ownership over the suit property. It appears that the suit property belongs to Municipal Council, Washim. Thus, neither the appellants nor the respondents could prove their ownership over the suit property. In the circumstances,

the Chief Officer, Municipal Council, Washim shall take appropriate steps in accordance with law for acquisition of suit property.

ORDER

- i] The appeal is partly allowed.
- ii] The judgment and decree dated 11/8/2003 passed by the Additional District Judge, Washim in Regular Civil Appeal No. 28/1998 as well as the judgment and decree dated 17/2/1998 passed by the 3rd Joint Civil Judge (J.D.), Washim in Regular Civil Suit No. 14/1987, are quashed and set aside.
- iii] Regular Civil Suit No. 14/1987 stands dismissed.

JUDGE

Sumit