



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

902 SECOND APPEAL NO. 318 OF 1994

Bansilal Chothmal Mutha (l.rs.)chandmal
& others

....Appellants

VERSUS

Shantilal Mohanlal Muthiyan.

.....Respondent

Mr. M. N. Navadar, Advocate for the appellants.

Mr. S. R. Dhorde, Advocate for Respondent Nos. 1a to 1c.

CORAM : R. M. JOSHI, J.

DATE : 30th JANUARY, 2025.

PER COURT :

1. This appeal takes exception to the concurrent judgments passed by Trial Court and First Appellate Court in Regular Civil Suit No. 524/1985 and Regular Civil Appeal No. 182/1994.

2. Parties are referred as Plaintiff and Defendants for the sake of convenience.

3. Heard learned counsel for both sides.

4. Plaintiff filed suit for recovery of possession of the suit property alleging erection of a structure thereon by Defendants

unauthorisedly. Plaintiff claims Defendants to be the trespassers in the suit property. Plaintiff's claim in respect of the suit property is based on a registered sale-deed dated 16.02.1074 executed in his favour by the erstwhile owner.

5. Defendants filed written statement and claimed plea of adverse possession. It is claimed that previously a suit being Regular Civil Suit No. 327/1973 was filed claiming tenancy against the erstwhile owner wherein the present Plaintiff was also a party. It is their contention that since they are in possession of the suit property from 1960, their possession be held as adverse to the owner.

6. There is no dispute about the fact that Plaintiff has acquired title in respect of the suit property on the basis of a registered sale-deed. For claiming adverse possession, it is a pre-requisite that such claimant accepts ownership/title of the person over the suit property against whom such plea is to be raised. In the written statement, Defendants have specifically denied title of Plaintiff over the suit property. Thus, it is not open for Defendants to claim adverse possession against Plaintiff. Apart from this, when Defendants have filed Regular Civil Suit No. 327/1973 against the

erstwhile owner claiming themselves to be tenant, as such there was also no question of any adverse possession against the vendor of Plaintiff. Thus, in any case, the plea of adverse possession raised by Defendants is not legally tenable. Similarly, claim of Defendants against erstwhile owner of tenancy in earlier suit is also rejected.

7. As far as other issues which occurred for decision of the Trial Court are concerned, the Trial Court as well as First Appellate Court have rightly appreciated the evidence on record and decreed the suit.

8. This Court, therefore, finds no substantial question of law involved in this appeal. Appeal, therefore, stands dismissed.

(R. M. JOSHI)
Judge

dyb