



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 266 OF 2023

Ashok Ramappa Katkar

.. Appellant

Versus

Deokabai Mansingh Rajput and others .. Respondents

Shri Mayur G. Deokate, Advocate for the Appellant.

Shri Sudhir K. Chavan, Advocate for the Respondent Nos. 1, 2A to 2C, 3 and 4.

CORAM : SHAILESH P. BRAHME, J.

DATE : 07TH AUGUST, 2025.

FINAL ORDER :

. Heard both sides. Present second appeal is arising out of concurrent findings of facts recorded by the Courts below in decreeing the suit of the respondents for possession.

2. Respondent Nos. 1 to 4 are original plaintiffs, who had filed R.C.S. No. 376 of 2001 for cancellation of agreement to sale and possession. The subject matter is house No. 850/863 bearing CTS No. 6457 situated at Jalna. It was belonging to the respondents-plaintiffs. Mansing husband of the respondent No. 1 - Devkabai had agreed to sell the suit house to appellant's father Ramappa by agreement executed on 06.11.1974. Earnest amount of Rs. 3,000/- was paid to Mansing. It is further contended that it was a money lending transaction and amount

was repaid by Mansing. Appellant's father was permitted to reside in the house for some period. Thereafter, though part of the property was handed over to the plaintiffs, the possession of the two rooms was retained by the appellant's father. Hence the suit was filed for cancellation of agreement and possession.

3. Appellant contested the suit on the ground that there was registered agreement executed between the parties and possession was also handed over. Entire amount of consideration was paid by the appellant's father Ramappa to Mansing. On 02.11.1997 further agreement was executed between them and possession receipt was also executed in favour of the appellant's father. Appellant's father claims to have acquired title. It is stated that suit is barred by limitation.

4. The Trial Court decreed the suit to the extent of possession vide judgment dated 03.08.2011. Being aggrieved R.C.A. No. 188 of 2017 was preferred by the appellant. It was dismissed on 30.08.2018.

5. Learned counsel Mr. Devkate for the appellant would submit that suit is hopelessly barred by limitation. Agreement was executed on 06.11.1974 and his client is in possession. Previously, they had filed R.C.S. No. 113 of 2000 and decree was passed. It is contended that due to continuous and long standing possession, appellant has acquired title. It is further submitted that respondents – plaintiffs were aware of the possession, but no

steps were taken till filing of the suit. It is submitted that in view of the decree passed in earlier suit, present suit is not tenable. Appellant is in possession, which needs to be protected U/Sec. 53A of the Transfer of Properties Act.

6. Per contra, learned counsel Mr. Chavan, for the respondents – plaintiffs submits that possession was handed over by the plaintiffs at the time of agreement dated 02.11.1997. He would further submit that appellant failed to prove that possession ever become adverse to the plaintiffs. It is vehemently submitted that in pursuance of the agreement, appellant did not file suit for specific performance of contract. The appellant cannot claim title on the basis of agreement.

7. I have considered rival submissions of the parties. Agreement to sale was executed on 06.11.1974 by Mansing in favour of Ramappa. It is mentioned in the agreement that possession was to be handed over at the time of execution of sale deed. Another agreement was executed between the parties on 02.11.1997. No suit for specific performance of contract was filed by the appellant or Ramappa. R.C.S. No. 133 of 2000 was filed by the appellant and decree of perpetual injunction was passed on 19.05.2006.

8. It is informed by the learned counsel Mr. Sudhir Chavan appearing for the respondents – plaintiffs that decree of possession passed by the Trial Court is executed on 10.02.2020 in

R.D. No. 67 of 2011. Presently respondents - plaintiffs are in possession of the suit house.

9. The appellant is claiming title on the basis of possession. It is not proved that possession was handed over by Mansing to Ramappa at the time of execution of agreement dated 06.11.1974. The city survey number referred shows that appellant's name was mutated in the year 1996. He filed R.C.S. No. 133 of 2000 for injunction and considering his possession, decree was passed on 19.05.2006. There is no material on record to show that appellant or his father were in possession since 1974. In the year 2000 when R.C.S. No. 133 of 2000 was filed the respondents – plaintiffs were aware of their possession. Hence on the basis of possession since 19.06.1996, it cannot be said that it was adverse to the respondents – plaintiffs. Present suit was filed in the year 2001. Mere possession cannot confer title upon the appellant. Both the Courts below have rightly concluded in that regard.

10. Appellant failed to make out a case of acquisition of title by adverse possession. The basic ingredients that his possession was hostile, in derogation with the title of the respondents – plaintiffs and asserting his own title have not been established. No case is made out that suit is barred by limitation.

11. Both the courts below have rightly appreciated vital aspect of the matter. Neither appellant's father, nor appellant filed any

suit for specific performance of contract. Their possession on the suit house cannot confer title, unless they succeed in a suit for specific performance of contract. The decree passed in R.C.S. No. 133 of 2000 also does not confer title upon the appellant. I find that no case is made out by the appellant to cause any interference in the impugned judgments and decrees. I am of the considered view that no substantial questions of law are involved in the second appeal.

12. Reliance is placed by the learned counsel Mr. Devkate on the judgment of the coordinate Bench at Bombay in the matter of Maruti Dagadu Charwad Deceased through Legal Representatives Vs. Bhau Nama Gujar Deceased through L.Rs. reported in *2017(5) Mh. L. J. 627* to buttress a plea of adverse possession and suit is barred by limitation. I have gone through para Nos. 9 to 11 of the judgment. The facts are distinguishable. In the present case possession of statutory period of twelve years has not been proved. Besides that no specific plea for adverse possession was taken in the Trial Court. Hence the ratio cannot be made applicable.

13. For the reasons stated above, second appeal has no substance. The second appeal is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME J.]

bsb/Aug. 25