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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 852 OF 2017
WITH
CIVIL APPLICATION NO. 1755 OF 2017**

Parvati Jaywant Kadam ... Appellant
(Decd) thru. LR Rahul Krishna Kadam
Vs.
Ashok Pandurang Mehatre and Others ... Respondents

Mr. Kuldeep Nikam for the Appellant.

CORAM : GAURI GODSE, J.

DATE : 5th MARCH 2025

ORDER :

1. Heard learned counsel for the appellant. This appeal is preferred by the heir and legal representative of the plaintiff to challenge the concurrent judgments and decrees dismissing the suit for declaration of perfection of title by way of adverse possession. The plaintiff also prayed for a decree of injunction to protect her possession.

2. Learned counsel for the appellant submits that the plaintiff claims to be in possession through her maternal uncle Krishna Hogale who was a protected tenant. He submits that protected

tenant had executed registered gift deed in favour of the plaintiff and gifted the entire suit property to her. He submits that the protected tenant Krishna Hogale had surrendered his tenancy rights, however, the plaintiff continued to be in possession of the part of the suit property described in paragraph 1B of the plaint.

3. Learned counsel for the appellant further submits that after death of Krishna Hogale also, the plaintiff continued in possession. He submits that by a registered sale deed the landlord alienated the suit property in favour of defendant nos. 1 to 4. He submits that since the defendants started disturbing the plaintiffs possession, she filed a suit for declaration of title by way of adverse possession and injunction to protect her possession.

4. Learned counsel for the appellant submits that the tenancy of Krishna Hogale through whom the plaintiff claims to be in possession is not in dispute. He therefore submits that both the courts erred in not considering the aspect of the original source of possession of the plaintiff which would support her contention that she is in long standing possession of the suit property. He thus submits that the second appeal would require consideration on the incorrect appreciation of the pleadings and evidence on record which supports the plaintiff's case of long standing possession.

5. Learned counsel for the appellant relied upon the pleadings in the written statement. He submits that the defendants admitted that for last four to five months prior to filing of the suit, the plaintiff was in possession of the suit property. He therefore submits that in any event the plaintiff would be entitled to a decree of injunction to protect her possession in view of the admission in the written statement.

6. I have perused the papers of the second appeal. Except for oral evidence, the plaintiff has not produced any evidence to support her pleadings of long standing possession. Apart from the oral evidence the plaintiff has not produced any supporting substantial evidence to support her pleadings of long standing possession. The averment in the written statement are discussed by both the courts. The reasons recorded by the first appellate court indicates that the pleadings in the written statement would at the most indicate that the plaintiff had started using portion of the suit land to store dunk. Thus admission regarding attempt by the plaintiff to use part of the suit property cannot be interpreted to mean that defendants admitted that the plaintiff was in possession of the suit property. The ownership of the defendants is not in dispute. Hence, any attempt on the part of the plaintiff to use the suit property owned

by the defendants cannot be interpreted to mean that she is in possession of the suit property. The revenue record discussed by both the courts indicate that Krishna Hogale through whom the plaintiff claims to be in possession has handed over possession to the landlord. The revenue records showing possession of the landlord is admittedly never challenged by the plaintiff. The documentary evidence relied upon by the plaintiff is in respect of the house property which also does not indicate that she was anytime in possession of the suit land. Thus the claim of the plaintiff of long standing possession is rightly disbelieved by both the courts by considering the evidence on record.

7. A perusal of the reasons recorded by both the courts indicate that all the documentary as well as oral evidence is exhaustively discussed by both the courts. I do not see any illegality or perversity in the reasons recorded by both the courts. In the absence of any supporting evidence of the plaintiff being in long standing possession, she would not be entitled for any declaration or protection of title by way of adverse possession. The plaintiff would also not be entitled to any decree of injunction in the absence of any supporting evidence of being in possession of the suit property.

8. The stray admission in the written statement regarding use of

part of the land by the plaintiff cannot be considered in view of the substantial material supporting the defendants' possession over the suit property. The arguments raised on behalf of the appellant would amount to re-appreciating the evidence on record which is not permissible under Section 100 of the Code of Civil Procedure, 1908.

9. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

10. In view of the disposal of the second appeal, civil application is disposed of as infructuous.

[GAURI GODSE, J.]