
(2019) 09 BOM CK 0108
In the Bombay High Court
Case No : Second Appeal No. 125 Of 1992

Barku	Vs	APPELLANT
Poonabai And Ors		RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Citation : (2019) 09 BOM CK 0108

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : K.B. Ambilwade

Final Decision : Dismissed

Judgement

1. This is a second appeal against the judgment of first appellate court / Additional District Judge, Gondia in Regular Civil Appeal No. 99/1987. The facts giving rise to this present appeal in short is as under:

Deceased Daulat Haridas Raikwar (Defendant) - (Parties are referred as per their nomenclature in the civil suit). The plaintiff (predecessor in title of respondent in this appeal) filed Regular Civil Suit No. 232/1979 before Civil Judge Jr. Division Gondia for permanent injunction. It was the case of the plaintiff that the suit land plot no. 2301 situated in Killa Ward, Tiroda admeasuring about 48 North X 48 South X 13 East X 11 West was purchased in the year 1960 from the defendant for the consideration of Rs.50/-. The defendant gave physical possession to the plaintiff. Since then plaintiff is in peaceful, undisturbed, physical possession of the suit land. The plaintiff is paying municipal taxes from the year 1960-61.

2. In 1979 plaintiff secured required permission from the municipal authority and started construction of septic tank of latrine and bathroom of the said land. The defendant (appellant) tried to obstruct work on 18.05.1979. Wife of plaintiff was only present, the defendant and his son again quarreled and abused them. Defendant thrown household articles lying there. Construction of the latrine was partly done. The report was lodged in the Police Station. Therefore plaintiff claim

injunction against the defendant.

3. The defendant (appellant) filed written statement vide Exh.27. The defendant denied the contention of the plaintiff. It is submitted that he has purchased the suit land with other land for Rs.375/- out of Abadi Khasra no. 98 situated in Killa Ward vide registered sale deed at 08.03.1960. Since then he is in continuous peaceful possession of the said land. He constructed a small hut on the suit land in summer of 1979 and had been continuous in possession. It is submitted that after obtaining temporary injunction, the plaintiff dismantle the hut of the defendant.

4. Issue were framed at Exh.21. Both parties adduced their respective evidence. Civil Judge Jr. Division dismissed the suit. Appeal was filed before the Additional District Judge, Gondia. The appeal came to be allowed. The suit of the plaintiff was decreed. Defendant (appellant) is permanently restrained from intervening into peaceful possession of the plaintiff over the suit land. Hence, the present appeal. After hearing learned counsel Shri Ambilwade filing substantial question of law arose before this court.

5. Whether civil suit for only injunction was maintainable without claiming declaration of title.

6. Heard learned Advocate Shri Ambilwade. He has submitted that the plaintiff not proved his title over the suit land. The simple suit for possession is not maintainable. In view of the judgment of Hon'ble Apex Court in case of Ravinder Kaur Grewal and others-V-Manjit Kaur and others (Civil Appeal No.7764 of 2014, reported in 07.08.2019). The simple civil suit for injunction can be filed on the basis of possession. There is no necessity to claim declaration of title etc.

7. In the present appeal the plaintiff examined adjacent owner (neighbours), namely, Tuljabai Nathhu Mandarkar at Exh.65 and Bisan Ramaji Muley at Exh.67. Both witnesses are residing near to suit plot. They have stated that plaintiff is in possession since last 18 years. There is a arrangement of bathroom and cooking of plaintiff. Defendant was not in possession of the disputed portion of suit plot.

8. Learned counsel Shri Ambilwade has submitted that the plaintiff has not filed any sale deed to prove his title. It is pertinent to note that plaintiff has specifically stated in his evidence and pleading that defendant (appellant) sold the suit plot to him for the consideration of Rs.50/-. As per the provisions of Transfer of Property Act if the value of immovable property is less than Rs.100/-, then registration is not necessary. Therefore it can not be said that the plaintiff failed to prove title only because of he has not filed sale deed on record. The evidence of Tuljabai, who was aged about 65 years at the time of evidence, show that her house is adjoining to the house of plaintiff. The plaintiff is in peaceful possession of the suit plot since last 18 years. This fact is also stated by witness Bisan Muley. He has stated that his house is adjoining to the house of plaintiff. Since last 25-30 years plaintiff is in possession of the suit plot. There is no reason for both this witnesses to depose against the defendant (appellant). The

plaintiff has proved his possession over the suit plot. As per his evidence he was paying municipal taxes etc. He started construction of septic tank for latrine, that time defendant obstructed him. First appellate court rightly recorded its finding. The suit can be filed on the basis of possession. Even without relief of declaration of title substantial question of law is answered accordingly. There is no merit in the second appeal. Hence, dismissed with no order as to costs.