

(2009) 11 BOM CK 0090
In the Bombay High Court
Case No : Second Appeal No. 452 of 1992

Dashrath Dada Chougule and Others	APPELLANT
Vs	
Grampanchayat, Village Bhoose and Another	RESPONDENT

Date of Decision : 07-11-2009

Acts Referred:

Bombay Village Panchayats Act, 1933 — Section 180, 28B
Maharashtra Land Revenue Code, 1966 — Section 20, 20(2)

Citation : (2010) 1 BomCR 171 : (2010) 1 MhLj 655

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : A.R.S. Baxi, for the Appellant; T.S. Ingale, for the Respondent

Judgement

Nishita Mhatre, J.—The judgment of the Additional District Judge, Sangli in Regular Civil Appeal No. 107 of 1983 has been challenged in the present Second Appeal.

2. The appellants are the heirs of one Narsappa Raghoba Chougule. The appellants contend that Narsappa Raghoba Chougule purchased the suit property which is CTS No. 402 situated at Miraj, admeasuring 15" X 16" from one Bhaskar Govind Utturkar. He purchased this property under a registered sale deed on 30.7.1907. According to the appellants, they were in possession of the suit property. However, the Village Panchayat i.e. Respondent No. 1 herein had encroached upon this property and was trying to construct a building on the property. A notice was issued u/s 180 of the Bombay Village Panchayat Act to the respondents by the appellants on 3.1.1977. It was contended that the suit property belonged to the appellants and that the village panchayat committee had no right over the suit property. The notice called upon the respondent No. 1 to cease and desist from continuing with the construction on the suit property. As Respondent No. 1 did not pay any heed to the their contention, the appellants filed a suit being RCS No. 9 of 1977 for a permanent injunction against the respondents. The interim injunction sought by the appellants was rejected.

3. In its written statement, respondent No. 1 contended that the suit property being CTS No. 402 and two adjoining properties being CTS Nos. 403 and 404 formed an open plot of land. These properties were owned by the Government of Maharashtra and had vested in the Gram Panchayat pursuant to the Government Resolution issued u/s 28B of the Bombay Village Panchayat Act, 1933 on 9.6.1950. It was contended that the building constructed on CTS No. 402 had been let out to one Surendra Jambu Chougule and that he was in possession of the same for several years as a tenant. Similarly the constructions on the other plots i.e. C.T.S. No. 403 and 404 had been let to other tenants. It was only because the buildings were old that they were required to be demolished. A notice was served on the tenants for eviction and accordingly, the tenants had handed over possession of the properties to the Gram Panchayat on 18.9.1978. Thereafter, the Gram Panchayat i.e. Respondent No. 1 herein had started construction on the suit property.

4. It appears that the appellants had amended the plaint and sought a declaration that they had a title to the property and were therefore, entitled to possession of the property. After the amendment, the Gram Panchayat filed an additional written statement and contended that in the alternative the property was owned by the Government of Maharashtra and, therefore, it was a necessary party to the suit. It was also pleaded that the Gram Panchayat's name was recorded in the city survey records after an enquiry was conducted by the Collector and that the appellants herein had not challenged this entry and therefore were estopped from claiming any relief. Besides this, it was contended that in any event since they were in possession of the suit property continuously since 1949, they had acquired title to the property by adverse possession.

5. Evidence was led by the parties. The appellants produced the sale deed of 1907 and two other sale deeds in order to establish their ownership of the suit property. The Court Commissioner's map in respect of the property was also placed on record.

6. The trial Court decreed the suit with costs on 31.12.1982. Respondent No. 1 was directed to furnish an undertaking to remove the construction on the suit property within three months and to hand possession of the property to the appellants. Respondent No. 1 preferred Regular Civil Appeal No. 107 of 1983. The Additional District Judge, Sangli allowed the appeal and dismissed the suit. It is against this judgment that the appellants have filed the present Second Appeal. The Second Appeal has been admitted on the following questions of law, namely: Was the Court below correct in holding that the appellant has no title to the suit property? (ii) Was the Court below correct in holding that the property was vested in Respondent No. 1?

7. The learned advocate for the appellants submits that the boundaries depicted in the sale deed of 1907 under which the appellants' grandfather Narsoba had purchased the suit property correspond with the boundaries mapped by the Court Commissioner. She submits that in such a situation the trial Court had

rightly held that the Gram Panchayat had no right whatsoever to the suit property when it had vested in the appellants' grandfather under the registered sale deed. The learned advocate then submits that u/s 20(2) of the Maharashtra Land Revenue Code, it was necessary to conduct an enquiry before acquiring any land. No survey had been undertaken by the Government for this purpose. She submits that the document at exhibit 74 relied on by the appellate Court is with respect to CTS No. 242 and not 402. She then submits that the government cannot acquire a private property of any person without following the procedure in law for acquisition of the land in accordance with law. She submits that the documents produced by Respondent No. 1 notifying the vesting of properties in the Gram Panchayat do not in any manner indicate that the appellants' property being City Survey No. 402 had in any way been resumed by the Government. She therefore urges that the land had not legally vested in the Respondent No. 1. She further submits that the Gram Panchayat cannot claim adverse possession as the plea is contradictory to its claim based on title. According to the learned advocate, when the boundaries of the land as described in the registered sale deed are not disputed by the Gram Panchayat the suit property must be held to be owned by the appellants and not Respondent No. 1. Apart from this, the learned advocate for the appellants submits that the Respondent No. 1 had not raised the plea of limitation in its written statement and, therefore, the appellate Court was not justified in considering the same and dismissing the suit on that ground. She further submits that it was only when the Gram Panchayat interfered with the enjoyment and use of the suit property from 1977 that the appellants were required to file the suit.

8. The learned advocate appearing for Respondent No. 1 submits that the appellants had failed to prove that the sale deed of 1907 was in respect of the suit property. He further submits that the title of the property was with the Government of Maharashtra and therefore, it was a necessary party. According to the learned advocate, the property had vested in the Gram Panchayat under the notification of 1950 and it was holding the property only as a manager under the provisions of the Bombay Village Panchayats Act, 1933. He further submits that the suit ought to have been dismissed for non joinder of necessary parties. He submits that although the appellate Court has considered it unnecessary to join the Government of Maharashtra as a party defendant to the suit it was obvious that the Gram Panchayat staked a claim to the property through the Government of Maharashtra, which owned the land. He submits that despite the finding of the appellate Court that the Government of Maharashtra was not a necessary party, Respondent No. 1 can support the judgment of the appellate Court on grounds negated by it. In support of this submission, he relies on the judgment of the Supreme court in the case of Jagdish Kumar and Others Vs. State of H.P. and Others, . He submits that the appellate Court has rightly concluded that the suit was barred by limitation, apart from the fact that on merits the appellants had not been able to establish their title to the suit property.

9. On a perusal of the impugned judgment and order, I find that one of the

grounds on which the appellate Court has dismissed the suit is that of limitation. It is held that the evidence on record indicated that the property was let out by the Gram Panchayat to Surendra Chougule several years before the filing of the suit and at any rate from 1957, the appellants were not in possession of the property. The suit for a declaration and injunction was filed only in 1977, 20 years after the appellants had lost possession of the property. Thus, it is obvious that the suit was barred by limitation. Apart from this, the appellate Court on considering the evidence on record has held that the appellants had failed to establish their title to the suit property.

10. The appellate Court has considered the sale deed of 30.6.1907 and has found that it did not relate to CTS No. 402 i.e. the suit property. It is observed that Narsappa who was the predecessor in title of the appellant purchased adjoining properties under the sale deed at exhibit 67, 61 and 56. On considering these three sale deeds, the appellate Court concluded that the measurements of the property mentioned in the Court Commissioner's map did not tally with the measurements in the sale deed. Therefore, according to the appellate Court, the property itself had not been identified by the appellants. There is no other evidence indicating that the suit property was owned by the appellants. The appellate Court has arrived at a finding of fact based on the evidence on record, which I need not interfere with in a Second Appeal.

11. It is submitted by the learned advocate for the appellants that two contrary pleas had been raised by the respondents -one of ownership based on title and the other of ownership by adverse possession. She submits that the land which was private property could not be acquired by the government without proceedings being initiated under the Land Acquisition Act, 1874. She further submits that there was no evidence on record to indicate that an enquiry u/s 20 of the Maharashtra Land Revenue Code had been initiated and therefore the notification produced at exhibit 79 does not in any way indicate that the land had vested in the Gram Panchayat.

12. Undoubtedly the Government Resolution produced by the Gram Panchayat dated 9.6.1950, indicates that the open spaces which were owned by the Government would vest in the Gram Panchayat u/s 28B of the Bombay Village Panchayat Act, 1933. It is evident from the material on record and admitted by the appellants that the land was used for tethering cattle. Thus, admittedly it was an open space. Once it has been held that the sale deed does not relate to the property described as CTS No. 402 and the appellants had not produced any material on record to establish their title, the notification relied on by the Gram Panchayat would be applicable. Apart from this, when the city survey scheme was implemented in village Bhose, the appellants took no steps to claim their title over the suit property despite the fact that the adjoining properties are shown to be in their name. In fact, the witness for the appellants has admitted that at the time when the city survey was conducted statements of the concerned persons were recorded and that he could not produce any

documentary evidence indicating that the suit property was owned by them. He has admitted that it was for this reason that the property came to be recorded in the name of the Gram Panchayat.

13. The learned advocate for the respondent No. 1 is right when he submits that the Government of Maharashtra was a necessary party to the suit. The property was owned by the Government and had vested in the Gram Panchayat only under the statutory provisions of the Bombay Village Panchayat Act, 1933 under which the property vested in the Panchayat as a manager. Therefore, in my opinion, the Government was a necessary party as its right of ownership of the property would be adverse to the claim of the appellants.

14. In my view, no substantial questions of law arise in the present appeal requiring any interference from this Court.

15. Second Appeal is dismissed.