
(2004) 03 BOM CK 0134
In the Bombay High Court
Case No : S.A. No. 192 of 1990

Deepak S. Gulalkari and Others APPELLANT
Vs
Pundlikrao C. Bangar and Others RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Limitation Act, 1963 — Article 65

Citation : AIR 2004 Bom 318

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : V.R. Choudhari, for the Appellant; M.B. Badye and R.E. Moharir, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—By invoking the jurisdiction of this Court u/s 100 of the Code of Civil Procedure, this second appeal is filed by the original plaintiffs taking an exception to the judgment and decree dated 19-12-1989 passed by the learned Additional District Judge in Regular Civil Appeal No. 477 of 1987, whereby the appeal was allowed and the judgment and decree dated 28-12-1987 passed by the learned 10th Joint Civil Judge, Jr. Dn., Amravati, in Regular Civil Suit No. 405 of 1986 was set aside and the suit seeking possession, declaration, injunction and damages was dismissed.

2. Relevant facts are required to be stated as under :

The case of the plaintiffs is that they are the owners of the suit plot described in para 1 of the plaint which is shown by letters A, B, C, D, E in the map annexed with the plaint. The suit plot was part of the field Survey No. 42/2 of mouza Rajapeth. Originally this field was owned and possessed by Ruikar family of Yavatmal district. Shri Ruikar drew lay out by converting agricultural land into non-agricultural for residential purpose and sold some plots including plot No. 331 to one Shankar Bajlrao Hingaspure by virtue of registered sale deed dated

29-7-1981 for consideration of Rs. 42,500/-. Thereafter the suit plot was transferred to some persons and lastly plaintiffs Nos. 1 and 2 purchased Western half portion of the said plot No. 33 for a consideration of Rs. 30,000/- from one Kondumal Gokulchand Khemchandani by registered sale deed dated 29-4-1985. Plaintiff Nos. 3 and 4 purchased the eastern half portion of plot No. 33 for a consideration of Rs. 30,000/- from one Sudhirkumar Umedrai Shah by virtue of registered sale deed dated 29-4-1985. It is contended that the defendants occupied the portion of the said plot which is shown by letters D E F G shown in the map annexed with the plaint. It is contended that the defendants have no right, title or interest in the suit plot and they have gone to the extent of taking electric connection in the kutchra house constructed on the suit plot from M.S.E.B. Defendant No. 3. In the circumstances, the plaintiffs were compelled to file the suit for possession.

3. The defendants resisted the claim of the plaintiffs by filing their written statement and contended that Shri Ruikar was the original owner of field survey No. 47/2 and one Dewaji Chidam was the manager, who was managing that property. It is contended that the said Dewaji Chidam had permitted the defendants to construct their residential house on the disputed plot in the year 1970 and a receipt was also scribed by him in that context. It is contended that the defendants were formerly working in the field of Shri Ruikar and hence they allowed them to reside on the disputed plot. It is further contended that the possession of the defendants is peaceful, continuous and without any disturbance and as an owner thereof for more than the statutory period and, therefore, they have perfected their title to the same by adverse possession and the suit is liable to be dismissed.

4. The trial Court framed the issues on the aforesaid pleadings and parties adduced evidence in support of their contentions. The learned trial Court on considering the evidence had recorded the findings that the plaintiffs are the exclusive owners of the disputed plot D E F G and the defendants have made encroachment on the disputed plot and the encroachment is shown by letters D E F G in the map annexed with the plaint and negated the contentions of the defendants that they have perfected their title to the disputed plot by adverse possession. Consistent with these findings, the trial Court granted decree by directing the defendants to deliver the possession of the area under encroachment as shown by letters D E F G in the map and also restrained them from committing any act of trespass over the disputed plot shown by letters D E F G, with future enquiry into mesne profits.

5. The defendants being aggrieved by the judgment and decree passed by the trial Court carried appeal to the District Court. The learned Additional District Judge on hearing the parties allowed the appeal and set aside the judgment and decree passed by the trial Court and dismissed the suit. This is how the original plaintiffs are before this Court in second appeal.

6. Mr. Choudhari, learned counsel, for the appellants contended that the plaintiffs

have established their title to the disputed plot which is plot No. 33. The plaintiff Nos. 1 and 2 purchased Western half portion of the said plot for consideration of Rs. 30,000/- from one Sudhirkumar Umedrai Shah by virtue of the registered sale deed dated 29-4-1985, it is contended that the defendants occupied the portion of the said plot which is shown by letters D E F G in the map annexed with the plaint and his possession is only permissive. It is contended that the defendants have no right, title or interest in the suit plot and they have gone to the extent of taking electric connection in the kutchra house constructed on the suit plot from defendant No. 3 M.S.E.B.

7. The contention of the defendants that they were permitted to occupy 360 sq. ft. area by Dewaji Chidam has been negatived by the trial Court because the defendants did not prove any right, title or interest in the disputed plot and their plea for adverse possession has been rightly negatived by the trial Court and, therefore, there was no reason for the appellate Court to disturb the findings of facts recorded by the trial Court. He contended that the appellate Court misdirected itself by misreading the evidence of Shankarrao (P.W. 1) and arrived at an erroneous finding that the plaintiffs have failed to establish their title to the disputed plot. He contended that the appellate Court has though recorded the finding that the defendants did not establish their title by virtue of adverse possession, has erroneously allowed the appeal, and, therefore, the same cannot be sustained in law. He contended that the possession of the defendant over the disputed plot was only a permissive possession and therefore, the plea of adverse possession raised by the defendants must fail and the judgment and decree passed by the trial Court deserves to be restored.

8. Mr. Badlye, learned counsel, for the defendants contended that the possession of the defendants over the suit plot from 1970 is not disputed. He pointed out that the defendants were paying the taxes to the Municipal Council for which the Municipal Council has issued the receipts. He further pointed out that the M.S.E.B. has provided electric connection in the kutchra house and the defendants are enjoying the possession continuously for more than 12 years to the knowledge of the owners and, therefore, they have perfected their title by adverse possession. He, therefore, contended that the appellate Court was perfectly justified in setting aside the judgment and decree passed by the trial Court and no interference into the same is warranted.

9. This Court has given thoughtful consideration to the contentions canvassed by the learned counsel for the parties. It is in dispute that the original owner of field survey No. 47/2 situated at mouza Rajapeth was originally owned by Ruikar family and thereafter the said agricultural field was converted for residential purpose by drawing the layouts. It is also not in dispute that layout was sanctioned and plot No. 33 was sold to one Shankarrao vide registered sale deed dated 29-7-1981 and thereafter the suit plot was transferred in the name of some persons and lastly the plaintiffs Nos. 1 and 2 purchased the Western half portion of the said plot No. 33 and plaintiffs Nos. 3 and 4 purchased the eastern

portion of the said plot No. 33 by virtue of the registered sale deed dated 29-7-1981.

10. The bone of contention of the learned counsel for the defendant is that they were permitted to use the area of 360 sq. ft. shown by letters D E F G by Dewaji Chidam some time in the year 1970 and thereafter the defendants had paid the municipal taxes and, therefore, they are in continuous and peaceful possession without any disturbance as an owner thereof for more than 12 years and, therefore, they have perfected their title by virtue of adverse possession to the kutchra house. This contention cannot be accepted for the simple reason that though it is stated that Dewaji Chidam, who was the manager of Ruikar family, had passed some receipts inducting the defendants as tenants on the suit plot, that document has not been produced on record.

11. Secondly, though the respondents are said to have paid the municipal taxes, electric bills etc. it did not follow that they have perfected their title by adverse possession. The receipts for payment of municipal taxes are issued as a matter of fiscal policy of the municipal council and those receipts cannot be taken into consideration to prove anybody's title to the property. The possession howsoever long it may be cannot become adverse to the knowledge of the true owners unless there is some definite assertion about hostile intention to the knowledge of the true owners.

12. It is well settled law that adverse possession means possession of the land or interest in the land by a wrong man against the will of the right man. Adverse possession, as its words imply, must be actual possession of another's land with intention to hold it and claim it as of his own, to the exclusion of the rightful owner. It must commence with the wrongful possession of the rightful owner at some particular time and must commence, in wrong against right. It must be actual, open, notorious and hostile under claim of right, continuous and exclusive and maintained for the statutory period. Possession and adverse possession do not mean the same thing. Mere user of the property cannot be taken as a definite assertion of the proprietary rights, there must be definite quality in the possession before it can be called adverse and some act of unequivocal character to put the owner on guard. There cannot be adverse possession if the claimant himself do not know that he was occupying somebody's land. However, permissive possession cannot be converted into adverse possession unless it is proved that the person in possession asserted an adverse title to the property, to the knowledge of the true owners for a period of 12 years or more.

13. The concept of adverse possession contemplates a hostile possession, i.e. possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possessed by a person who does not acknowledge the other's rights but deny them. Also a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to real owner and amounted to a denial of his title to the property claim. Permissive possession does not become hostile till there is

assertion of adverse possession to the knowledge of the owner. Permissive character of the possession cannot be inferred from the attending circumstances even without direct evidence. If possession is found to be permissive at the inception the possessor cannot prescribe or sustain title or any claim to the grantor of the possession. However, permissive possession cannot be converted into adverse possession unless it is proved that the person in possession asserted an adverse title to the property, to the knowledge of the true owners for a period of 12 years or more. This Court is fortified in its view by the decision of the Supreme Court in *The State Bank of Travancore Vs. Aravindan Kunju Panicker and Others*, wherein it is held, "a permissive possession cannot be converted into an adverse possession unless it is proved that the person in possession asserted an adverse title to the property to the knowledge of the true owners for a period of 12 years or more."

14. In such circumstances, it is not possible to accept that the defendants have perfected their title by adverse possession to the portion of the suit plot shown by letters D E F G admeasuring 360 sq. ft. as shown by the Commissioner in the map annexed with his report. In that view of the matter, it is clear that the appellate court has committed an error of law in setting aside the judgment and decree passed by the trial Court and, therefore, the judgment and decree of the appellate Court cannot be sustained in law and deserves to be set aside. In the result, the appeal is allowed. The judgment and decree passed by the appellate Court is set aside and that of the trial Court is restored. However, in the circumstances, there shall be no order as to costs.