(2014) 11 BOM CK 0116

In the Bombay High Court

Case No : Second Appeal No. 107 of 2002

Tulsiram APPELLANT

Vs

Sadashiv RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Maharashtra Land Revenue Code, 1966 — Section 126, 127, 129, 2(12)

Citation : (2014) 11 BOM CK 0116

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : Amol Deshpande, Advocate for the Appellant

Judgement

A.S. Chandurkar, J.—The present appeal under Section 100 of the Code of Civil Procedure has been preferred by the original defendant challenging the decree passed by the trial Court as confirmed by the lower appellate Court.

2. The subject matter of this appeal is an open site situated in Ward No. 5 at village Kanwad, Tq. Risod, Distt. Washim. It admeasures 75 ft. x 25 ft. According to the plaintiff, his father purchased the same under registered sale deed dated 2-3-1948. The plaintiff''s father had permitted his maternal uncle - Mahadeoappa to occupy said property as he had no other place to reside. After the death of the plaintiff''s father, the plaintiff became its owner. In the year 1992, the plaintiff noticed that certain construction had been erected on the suit property. In this background, the plaintiff filed Regular Civil Suit No. 204 of 1991 on 30th April, 1990 for possession of said suit property.

3. The appellant - original defendant filed his written statement vide Exhibit-30. The case of the plaintiff was denied. According to the defendant, he had purchased aforesaid suit property from Mahadeoappa on 22-2-1990 for a consideration of Rs.7,000/-. According to the defendant, in the year 1948 itself, Mahadeoappa had intended to purchase suit property from the original owner. As he did not have sufficient funds, he had taken hand loan from the plaintiff''s

father. As security for said loan amount, the sale deed was executed in favour of the plaintiff''s father. According to the defendant, Mahadeoappa was put in possession on execution of sale deed and he continued to remain in possession. He further stated that the Revenue Department had issued a Sanad in favour of Mahadeoappa. Alternatively, it was stated that Mahadeoappa had perfected his title by adverse possession.

4. The trial Court after considering the evidence on record held that the plaintiff had proved his ownership on the suit property and that the defendant had failed to prove that the sale deed in the year 1948 had been nominally executed in the name of the plaintiff''s father. The plea as regards adverse possession was negatived. By judgment dated 29-6-1998, the suit for possession was decreed.

The appellate Court concurred with the findings recorded by the trial Court and dismissed the appeal filed by the original defendant. Hence, the present second appeal.

5. The following substantial questions of law were framed while admitting the second appeal.

(1) Whether admittedly, the property standing in the name of Mahadeoappa and the Sanad issued by the Revenue Authorities in favour of Mahadeoappa was the real owner of the property and the finding that it is not proved that the father of the plaintiff was the Benamidar of Mahadeoappa is based on perverse appreciation of facts?

(2) Whether the possession of Mahadeoappa is that of the owner which is clearly reflected in the records and from the sanad issued under the provisions of Section 129 read with section 130 of the Act and the said possession is right from the year 1948 till the date of execution of the sale deed by Mahadeoappa in favour of the defendant proves that said Mahadeoappa became the owner by way of adverse possession?

6. Shri Amol Deshpande, the learned Counsel appearing for the appellant submitted that the Courts below erred in decreeing the suit for possession. He submitted that the sale deed dated 2-3-1948 though executed in favour of the plaintiff''s father was a document executed by way of security. He submitted that Mahadeoappa was the actual owner of said property and this was clear from the Sanad that was issued to him in the year 1976. He submitted that Mahadeoappa had legal title to execute sale deed on 22-2-1990 in his favour. He further submitted that as the right of Mahadeoappa was recognized in the year 1976 by issuing Sanad, it was clear that on completion of period of 12 years, said Mahadeoappa perfected his title by adverse possession. Hence, even otherwise, he was legally competent to execute the sale deed in favour of the defendant. Relying upon judgment of the Ulawappa Basawaneppa Hugar Vs. Gadigewa Hugar, , he submitted that by virtue of issuance of Sanad, there was a presumption in favour of the Sanad holder that he was in possession. He submitted that aforesaid decision was considered subsequently by another

Narbheramji Gyaniramji Ramsnehi Vs. Vivekramji Bhagatramji Ramsnehi, in which it was held that the possession of the Sanad holder could be gathered from such Sanad.

He also relied upon judgment of the learned Single Judge in Sahadeo Ingle Vs. Khushal Wankhade and Others, in which it was held that entries as regards issuance of Sanad was an important piece of evidence. As regards the aspect of adverse possession, he relied upon the decision of the Madras High Court in Raju and Parvathi Vs. Muthuammal and Others, . He, therefore, submitted that the defendant was the owner of the suit property by virtue of sale deed executed in his favour in the year 1990.

Though the respondent is served, he has not chosen to contest the second appeal that was heard on 10-11-2014, 11-11-2014 and today.

7. The relevant factual aspect as regards execution of sale deed dated 2-3-1948 in favour of the plaintiff''s father, issuance of a Sanad some time in the year 1976 in favour of Mahadeoappa and the subsequent sale deed dated 22-2-1990 in favour of the defendant is not in dispute. While the plaintiff examined himself and one witness - Rangnath, the defendant examined himself and his vendor, Mahadeoappa. While the claim of the plaintiff is based on sale deed dated 2-3-1948 (Exhibit-47), the claim of the defendant is based on Sanad granted in favour of Mahadeoappa in 1976 (Exhibit-63) followed by sale deed dated 22-2-1990 (Exhibit-57) in his favour.

8. As the defendant claims his title from Mahadeoappa and said Mahadeoappa relies upon Sanad issued in his favour, it would be necessary to note the relevant provisions of the Maharashtra Land Revenue Code, 1966 (for short the Code of 1966). As per provisions of Section 129 of the Code after completion of a survey by the State Government through its authorities, the holder of a site is entitled to receive a Sanad in the form as stated in Schedule C. Section 129 of the Code of 1966 reads thus:

Sanad to be granted without extra charge.

Every holder of a building site as aforesaid and every holder of a building site newly formed or first used as such, after the completion of a survey under Section 126 shall be entitled, where the holder is required to pay survey fee provided therefor, to receive from the Collector without extra charge one or more sanads, in the form of Schedule ''C'' or to the like effect specifying by plan and description the extent and conditions of his holding and where a holder is not required to pay any survey fee, he shall be entitled to receive such sanad or sanads on payment of a fee of one rupee per sanad. Every such sanad shall be executed on behalf of the Governor by such person as he may direct or authorise:

Provided that, if such holder do not apply for such sanad or sanads at the time of payment of the survey fee or thereafter within one year from the date of the public notice issued by the Collector under Section 127, the Collector may require him to pay an additional fee not exceeding one rupee for each sanad.

The expression "holder of land" is defined by Section 2(12) of the Code. Section 2(12) reads thus:

"to hold land" or "to be a land-holder or holder of land" means to be lawfully in possession of land, whether such possession is actual or not.

9. From the aforesaid, it is, therefore, clear that a holder of land who is lawfully in possession of land is entitled to be issued a Sanad in terms of provisions of Section 129 of the Code. A perusal of Exhibit-64 indicates that it was a notice issued under provisions of the Code of 1966 to Mahadeoappa and persons having any interest in said land. Said notice was issued with regard to determining the rights in said land and for fixing boundaries. It records that on 9-7-1976, necessary enquiry was made in respect of sheet No. 2 at mouza Kinwad and rights of said Mahadeoappa were recognized therein. On that basis, Sanad under Schedule C to the Code of 1966 was issued in the name of Mahadeoappa.

10. In this background, if the deposition of Mahadeoappa (Exhibit-58) is perused, it will indicate that he has referred to the earlier transaction of the year 1948. He has stated that as the plaintiff''s father was related to him, though the entire consideration of the earlier sale deed was paid to the plaintiff''s father by the year 1955, a formal document in that regard was not executed. He has categorically stated that since 1948, he was in possession of the suit property. Though aforesaid witness was cross examined at length, there is no cross-examination as regards issuance of notice (Exhibit-64) and Sanad (Exhibit-63). Therefore, in absence of any cross-examination as regards issuance of Sanad, it will be clear that the plaintiff did not seriously dispute its issuance in favour of Mahadeoappa in the year 1976.

11. In Ulawappa (supra), it was observed by the Division Bench while considering provisions of Section 133 of the Bombay Land Revenue Code, 1879 that is somewhat similarly worded when compared with Section 129 of the Code of 1966, that when a Sanad is given under Section 133 after due enquiry, the Sanad itself is a document of title. It was further observed that if anybody intended to dispute the title of the Sanad holder, said person would have to show that he had acquired title by adverse possession. It was further observed that once a Sanad was proved, it was not necessary for the Sanad holder to further prove that he was in possession within 12 years of filing of the suit.

In Narbheramji (supra), the earlier decision in Ulawappa (supra) was referred to and it was observed that a Sanad granted under Section 133 of the Bombay Land Revenue Code, 1879 was not strictly speaking in the nature of document of title between the litigating parties. It was, however, observed that it was a prima faice evidence of title and though not conclusive, it could be overridden as other evidence may be overridden. Thus, it is clear that though a Sanad may not be treated strictly as a document of title, it is a piece of evidence in favour of the person whose name has been entered and to whom the Sanad has been issued.

Thus, as observed above, such piece of evidence would have to be countered by other evidence to dislodge the contents of such Sanad.

12. In this background, if the evidence on record is perused, it is clear that necessary enquiry/survey came to be made and Sanad came to be issued in the year 1976. The other documents placed on record are in the form of a certificate (Exhibit-58) issued by the Gram Panchayat on 17-2-1990 that it was Mahadeoappa who was in possession. Tax receipts at Exhibits-61 & 62 issued to Mahadeoappa are for the years 1986 and 1987 respectively. The plaintiff, however, has relied on the sale deed dated 2-3-1948 and report dated 4-4-1990 (Exhibit-48) made by the plaintiff to the police authorities. Besides this, there is no other evidence led by the plaintiff indicating either his possession or payment of taxes.

13. Thus, treating the Sanad (Exhibit-63) as a piece of evidence indicating possession of Mahadeoappa coupled with the fact that the plaintiff did not choose to cross examine said Mahadeoappa as regards issuance of said Sanad, it is clear that at least from 1976, if not earlier, the possession of Mahadeoappa is clearly established. The material on record in the form of payment of taxes subsequently corroborates said aspect. The sale deed in favour of the defendant was executed on 22-2-1990 i.e. after almost 14 years from issuance of the Sanad. Hence, possession of Mahadeoappa for said period of 14 years i.e. from the issuance of Sanad in 1976 till the execution of the sale deed on 22-2-1990 is established by the material on record. The plaintiff in his cross-examination has stated that Mahadeoappa went to reside at Washim in the year 1990. Similar statement has been made by PW-2 Pralhad (Exhibit-54) in his cross-examination. Thus, it is clear that atleast till execution of the sale deed in favour of the defendant, Mahadeoappa resided at Kinwad.

14. In S.M. Karim Vs. Mst. Bibi Sakina, , it was observed in para 5 as under:

"5 ... Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found ..."

Recently, the Supreme Court in Tribhuvanshankar Vs. Amrutlal, as under:

"34. The conception of adverse possession fundamentally contemplates a hostile possession by which there is a denial of title of the true owner. By virtue of remaining in possession the possessor takes an adverse stance to the title of the true owner. In fact, he disputes the same. A mere possession of user or permissive possession does not remotely come near the spectrum of adverse possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law so that the possessor perfects his title by adverse possession. It has been held in AIR 1934 23 (Privy Council) that the ordinary classical requirement of adverse possession is that it should be nec vi, nec clam, nec precario."

15. From the aforesaid material on record, therefore, it will have to be held that Mahadeoappa was in possession of the property in question at least since 1976 onwards. He held the same adversely to the plaintiff who did not even dispute the Sanad (Exhibit 63). Both the Courts, however, ignored the relevant evidence while decreeing the plaintiff''s suit. It is, therefore, clear that the plaintiff could not have succeeded on the basis of the sale deed dated 2-3-1948 in view of the subsequent issuance of Sanad in favour of Mahadeoappa in 1976 followed by his continuous possession for more than 12 years and execution of sale deed in favour of the defendant on 22-2-1990. Hence, the substantial questions as framed stand answered accordingly and it is held that Mahadeoappa had become owner by way of adverse possession.

16. In view of aforesaid discussion, the following order is passed.

OREDER

[1] The judgment dated 29-6-1998 passed in Regular Civil Suit No. 204/1991 as well as judgment dated 30-11-2001 passed in Regular Civil Appeal No. 61/1998 is set aside.

[2] The suit filed by the plaintiff stands dismissed.

[3] The Second Appeal is allowed with no order as to Costs.

