
(1994) 10 BOM CK 0025
In the Bombay High Court
Case No : Second Appeal No. 121 of 1982

Vithal Laxman Patil

APPELLANT

Vs

Jaysingrao Bajirao Patil, since decd. by his heirs and Another

RESPONDENT

Date of Decision : 19-10-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Limitation Act, 1963 — Article 64, 65
Transfer of Property Act, 1882 — Section 3

Citation : (1995) 2 BomCR 619

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Advocate : Rajiv V. More, for the Appellant; S.S. Deshpande, for B.P. Apte, for respondent Nos. 1a to 1c, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Pandit, J.—Shri Vithal Laxman Patil, the original defendant No. 2 in Regular Civil Suit No. 44 of 1973 on the file of the Civil Judge, Junior Division, Vita has come in Second Appeal before this Court.

2. The suit property is a house property bearing Grampanchayat Property No. 268 of Mouje Ambak, District Sangli. Original plaintiff Jaysingrao Bajirao Patil came before the Court with a case that the said property was originally belonging to the Gujar family and he had purchased the said property under two Sale Deeds and had become owner of the same. But the appellant original defendant No. 2 Vithal Laxman Patil was obstructing him from enjoying the said property. He, therefore, sought a decree for perpetual injunction and in the alternative, a decree for possession. The original defendant No. 1 the Grampanchayat of Mouje Ambak was though duly served did not appear before the Court and contest the claim of the plaintiff. But the present appellant Shri Vithal Laxman Patil had contested the claim of the plaintiff by filing his written statement at Exhibit 11. He has contended that the claim of the plaintiff that the property originally

belonged to Gujar family was false. The sale deeds in favour of plaintiff by Gujar family were sham and bogus and they were not conferring any title on him. He further contended that the property in question was the ancestral property and he was the owner of the same. In the alternative, he contended that he has become the owner of the said property by adverse possession. He thus contended that the plaintiff was not entitled to get any decree and the plaintiff's suit should be dismissed with costs.

3. In view of the pleadings of parties, the trial Court has settled the issues at Exhibit 18 and recorded the evidence for both sides. On considering the evidence before him, the trial Court came to the conclusion that the plaintiff had proved his title as well as his possession to the property in question. The trial Court, therefore, passed a decree of perpetual injunction in favour of the respondent-original plaintiff and against the appellant-original defendant.

4. Being felt aggrieved by the said decision of the trial Court, the appellant had preferred Civil Appeal No. 96 of 1980 in the District Court of Sangli. The said appeal was heard by the Assistant Judge, Sangli. The learned Assistant Judge has confirmed the finding of the trial Court and held that the plaintiff has proved his title to the property in question. The Appeal Court has further found that the plaintiff was not in possession of the property. He also found that the appellant/original defendant has not perfected his title by adverse possession. Therefore, in the circumstances, though he dismissed the appellant's appeal, he modified the decree of the trial Court passing a decree for possession instead of a decree of perpetual injunction.

5. Being felt aggrieved by the aforesaid decision, the original defendant-appellant has come before me in the Second Appeal. The learned Advocate Mr. More for the appellant urged before me that the finding of the lower Court that the plaintiff had proved his title to the property in question was not at all warranted by material on record. He has also canvassed before me that the appellant/original defendant No. 2 had perfected his title to the property by adverse possession, and therefore, in the circumstances, according to him, I should allow the appeal and dismiss the plaintiff's suit.

6. At the outset, it must be said that both the trial Court as well as First Appellate Court have concurrently held that the plaintiff has proved his title to the property in question. It must be remembered that the property in question is a house property and the plaintiff as well as his predecessor-in-title are contending that the property in question is ancestral property of Gujar family. As the property is situated in a village where admittedly was also no Grampanchayat till the year 1955. There could not be any public record showing that the property in question was standing in the name of such and such person in the public record. When the person is claiming the property to be his ancestral property and has come to him from generation to generation one cannot expect that he should produce a deed of title to show the same. It must be mentioned here that the property in question was once entered into the name of

Grampanchayat in the assessment list but even then the Grampanchayat has not come forward to deny and dispute the claim of the plaintiff that he had become the owner of the suit property as he had purchased the said property from the Gujar family. That conduct of the Grampanchayat could be taken into consideration in accepting the claim of the plaintiff. The very fact that the property was standing in the name of the Grampanchayat and the Grampanchayat has not come forward to show that the entry made in such assessment list was correct and proper and has not disputed the contention and/or the claim of the plaintiff itself gives a stronger support to the claim of the plaintiff. The learned Advocate for the appellant took me through the evidence of the plaintiff's vendors as well as the plaintiff and urged before me that the plaintiffs are not in a position to give details of the ownership of the property in question and how the property in question became the property of Gujar family. But when the plaintiff and his father are claiming that the properties are the ancestral property which is in dilapidated condition for years together, the failure of the plaintiff's father to show any deed of title, is of no material in view of the peculiar circumstances and in view of the fact that the property is situated in a distant village. It must be mentioned here that though the appellant-original defendant had claimed relief in his written statement that the property in question was an ancestral property, he has given up that claim. It must be further remembered that this is a civil proceeding and not a criminal proceeding. It is also very pertinent to note that it is not the claim of the appellant-original defendant that the property belonged to somebody else than the Gujar family. The trial Court had appointed a Court Commissioner under Order 26 of the CPC to visit the suit property and to submit his report regarding the position of the suit property. The Court Commissioner has submitted his report at Exhibit 58. The said report Exhibit 58 shows that in the old wada there is inscription on the stone showing the name of Gujar and the year of the said inscription and that circumstance is taken into consideration by the First Appellate Court saying that the property in question must be belonging to Gujar family. Therefore, in view of the fact that though the property is standing in the name of the Grampanchayat, the Grampanchayat has not disputed the ownership of the plaintiff or his vendor. If the inscription on the stone showing the name of Gujar and the year of the said inscription on the stone is taken into consideration, then it is not the claim of the appellant-original defendant that the property in question is belonging to somebody else than Gujar family, then the finding recorded by the trial Court on the strength of the fact that Gujar family are paying the assessment taxes of the house property in question as evident from the receipts at Exhibits 34 and 35 and that the Grampanchayat in the year 1960 passed a Resolution to enter the name of Gujar family as owner of the property in question then the said finding of the trial Court as well as First Appellate Court could not be said to be perverse finding so as to interfere with the same in this Second Appeal.

7. It is vehemently urged before me by the learned Advocate Mr. More for the appellant that in view of the document at Exhibit 40, it should be held that at

least from the year 1960, defendant No. 2/original appellant before me is in possession of the property adversely. Exhibit 40 is a reply given by the Grampanchayat on 6th June, 1960 to the present appellant and plaintiff's vendor informing them that the application given by the present appellant was rejected and the application of the plaintiff's vendor was allowed. In the said application, the appellant was claiming to be in possession of the property. But it is very difficult to accept that claim as there is no copy of the application on record to know what was the claim by the present appellant. It is very difficult to come to the conclusion that the appellant/original defendant had perfected his title by adverse possession for more than 12 years next before the date of the suit in view of the other material on record. Before considering the claim of the plaintiff and the evidence on record, it is necessary to bear in mind the nature of the property in question. The property in question is a house property. It is dilapidated old wada and some portion of the said old wada is admittedly at present lying vacant. When the property is a house property or house site then the occupation and use of the said property would be the occupation of which by entering into the house property and actual enjoyment and use of the house property or by raising construction in the said house site. The appellant/original defendant himself has clearly admitted in his cross-examination that he did not know who is the owner of the property in question. That admission of the defendant that he did not know who is the owner of the property in question clearly shows that he was not having necessary animus to possess and hold the property in question adversely against its true owner. The evidence which the plaintiff has led and which is also come by way of the Commissioner's report by Exhibit 58 that some portion of the open portion of the old wada is in dilapidated condition. The appellant/original defendant has his cattle shed, Ukirda (dung hill) and Gunj. His evidence also further shows that he was also tethering his cattle in the same. His keeping the cattle in the same and storage of hay stock and using the open space as dung pit could not be the acts of adverse possession so as to destroy the title of the real owner by prescription. It has come in evidence that Gujar family had left the village and they had gone out of village about 20 to 25 years ago, and therefore, in the circumstances, when the wada in question was in dilapidated condition and the owner of the old wada is not living in the village, the appellant-original defendant's making some use of the said wada will not amount to act of adverse possession and to perfect a title to the said wada by adverse possession so as to destroy the title of the real owner by adverse possession.

8. I, therefore, in the circumstances, hold that the finding recorded by the trial Court as well as First Appellate Court that the appellant-original defendant has failed to prove his title to the house property in question by adverse possession will have to be confirmed and the present appeal will have to be dismissed. But, in the circumstances, I direct the parties to bear their respective costs of the Second Appeal.