

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 497 OF 2012

1. Sahebrao @ Bala Sakharam Vyavahare
[since deceased – through L.Rs.]
- 1-A. Prakash Sahebrao @ Bala Vyavahare
Age : Major, Occ. Agriculture,
R/o : Kanhur Pathar, Tq. Parner,
Dist. : Ahmednagar.
- 1-B. Kiran Sahebrao @ Bala Vyavahare
Age : Major, Occ. Agriculture,
R/o : Kanhur Pathar, Tq. Parner,
Dist. : Ahmednagar.
- 1-C. Godhabai Bhanudas Kolhe
Age : Major, Occ. Household,
R/o : Jawala, Tq. Parner,
Dist. : Ahmednagar.
2. Dadabhau Bala Vyavahare
Age : 32 Yrs., Occ. Agriculture,
R/o : Kanhur Pathar, Tq. Parner,
Dist. : Ahmednagar.
3. Babaji Bala Vyavahare
Age : 32 Yrs., Occ. Agriculture,
R/o : Kanhur Pathar, Tq. Parner,
Dist. : Ahmednagar.
4. Hirabai Bala Vyavahare
Age : 50 Yrs., Occ. Agriculture,
R/o : Kanhur Pathar, Tq. Parner,
Dist. : Ahmednagar.
5. Kamal Dadabhau Vyavahare
Age : 32 Yrs., Occ. Agriculture,

R/o : Kanhur Pathar, Tq. Parner,
Dist. : Ahmednagar.

6. Sugandabai Manjaba Vyavhare
[deleted].

.... **APPELLANTS**

V E R S U S

Ratnabai Bhau Kolhe
[since deceased – through L.Rs.]
Laxmibai W/o Digambar Bankar
Age : 45 Yrs., Occ. Household,
R/o : Kanhur Pathar, Tq. Parner,
Dist. : Ahmednagar.

.... **RESPONDENT**

Mr. Amol S. Sawant, Advocate for the Appellants.

CORAM : S.V.GANGAPURWALA, J.

DATE OF JUDGMENT : 31/07/2012.

ORAL JUDGMENT :

1. The present appellant is the original defendant. The respondent/plaintiff filed Suit for injunction and also alternatively claimed possession on the ground that she is the owner of the property. The trial Court dismissed the Suit. The plaintiff filed Appeal before the District Court. The District Court allowed the Appeal and decreed the Suit of the plaintiff. The defendant has assailed the said Judgment in

the present Second Appeal.

2. Mr. Sawant, learned counsel for the appellant strenuously contends that the present appellant had also filed R.C.S. No. 201 of 1993 for declaration that Ratnabai i.e. present respondent is not the owner of the suit property and for injunction. The trial Court partly decreed the Suit, negatived the relief of declaration but granted the relief of injunction. Ratnabai filed Appeal before the District Court. The District Court dismissed the Appeal and confirmed the Judgment and decree passed by the trial Court, thereby clamped injunction on Ratnabai from dispossessing the present appellant. The said decree has become final. In view of that, there could not be contrary decree of possession.

3. The learned counsel submits that the Suit filed by the present respondent i.e. R.C.S. No. 263 of 1994 was dismissed by the trial Court holding that the respondent could not prove that she is the owner of the property and had also come to the conclusion that the Suit is time barred. The Suit is bad on account of non joinder of necessary party i.e. predecessor in title. According to the learned counsel, the lower appellate Court in an Appeal filed by the present respondent against the said Judgment and decree did not even deal with the issue of non joinder of necessary parties and has reversed the Judgment and decree passed by the trial Court.

4. According to the learned counsel, the appellate Court while reversing the Judgment of the trial Court has not within the close quarters of the reasonings given by the trial Court. For the said purpose, the learned counsel relies on the Judgment of the Apex Court in the case of Santosh Hazari V/s Purushottam Tiwari reported in 2001 AIR (SC) - 965 and another Judgment of the Apex Court in the case of Kamlesh Babu & Ors. V/s Lajpat Rai Sharma & Ors. Reported in (2008) 12 Supreme Court Cases – 577.

5. The learned counsel further contends that the present appellant had only admitted the execution of the sale deed in the name of Ratnabai, but had not admitted the contents. The contents are not proved. Mere admitting the execution of the document does not mean that the contents are admitted. The contents have to be proved. The plaintiff Ratnabai has miserably failed to prove the contents. Even the aspect of limitation has not been considered by the Court. The alleged sale deed is of the year 1979. The appellant is in possession of the property. The Suit is filed in the year 1994. The Suit was clearly barred by limitation.

6. With the assistance of the leaned counsel for the appellant, I have gone through the Judgments delivered by both the Courts.

7. The Judgment and decree passed in R.C.S. No. 201 of

1993, whereby the relief of declaration as sought by the present appellant to declare that Ratnabai is not the owner of the suit property, has been negatived and the same has become final, meaning thereby that the finding that Ratnabai is the owner of the property has attained finality.

8. The appellate Court has observed that the defendant i.e. the present appellant admitted that the property is purchased in the name of Ratnabai for the consideration of ₹ 10,000/- [Rupees Ten Thousand only] as he was a landless person and the property could not be purchased in his name. In view of such a defence, burden lay upon the appellant. The plaintiff Ratnabai has examined the scribe of the sale deed, the stamp vendor to prove the said sale deed. Merely because the predecessor who has executed the sale deed is not examined, would not make any difference nor he is the necessary party to the Suit. The trial Court was in error in holding that said Mr. Gaike, who had executed the sale deed in favour of Ratnabai is a necessary party. No relief is claimed against said Mr. Gaike.

9. The present Suit would be governed by Article 65 of the Limitation Act as the Suit is based on title. In the Suit based on title, there is no limitation unless the defendant succeeds in proving that he has perfected his title by adverse possession. The defendant has not taken that plea in the Written Statement nor in the Appeal. In view of

that, even the question of limitation would not arise.

10. In light of the above, the Second Appeal being sans substantial question of law is dismissed, however with no order as to costs.

11. In view of dismissal of the Second Appeal, the Civil Application does not survive and stands disposed of.

[S.V.GANGAPURWALA, J]

KNP/S.A. 497.2012 - [J]