IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 206 of 1997

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LAXMAN RAMJI MARATHE SINCE DECD THROUGH HIS HEIRS & ORS.

Versus

DHANVANTLAL CHUNILAL SHETH (SINCE DECD. THRO HIS HEIRS & ORS.

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Appearance:
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESTENTATIVES for the Appellant(s) No. 1.2,1.3,1.8
MS. PRIYANSHI JOSHI(15412) for the Appellant(s) No. 1.1,1.1.1,1.2.1,1.2.2,1.3.1,1.3.2,1.3.3,1.3.4,1.5,1.6,1.7,1.8.1,1.8.2,1.8.3,1.9
UNSERVED EXPIRED (N) for the Appellant(s) No. 1.4
ADVOCATE NOTICE SERVED for the Respondent(s) No. 1.4
SERVED BY PUBLICATION IN NEWS for the Respondent(s) No. 1.1,1.2,1.3,2,3

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 01/09/2025

ORAL ORDER

1. The present Second Appeal has been filed under Section 100 of Code of Civil Procedure, 1908 (for short "the Code") challenging the judgement and decree dated 17.10.1997, passed by the District Judge in Regular Civil Appeal No.52 of 1990, allowing the Appeal and setting aside the judgement and decree passed by the Trial Court in Regular Civil Suit no.409 of 1984, whereby the First Appellate Court declared that the plaintiffs are owners in respect of the suit properties except corner land admeasuring at 34 feet/ 17 feet 10 inches and granted mandatory injunction.

2. For the sake of brevity and convenience the parties are referred to as per their original status as that in the suit.

3. The brief facts arising in the present Second Appeal are that the plaintiff claiming to be the owner of the suit property filed Civil Suit No.409 of 1984 sought relief, to declare that the plaintiffs are owners of the property mentioned at para no.1 and 10 of the plaint, except 34 feet/ 17 feet 10 inches and for other mandatory and preventive reliefs. The Trial Court dismissed the said suit by an order dated 30.10.1994 and the said judgement and decree was challenged by the plaintiff and after reappreciating the evidence the First Appellate Court allowed the said appeal, hence the present Second Appeal.

4. The present Second Appeal has been Admitted by order dated 24.08.1999 by the Coordinate Bench and following substantial questions of law are framed:

> *"(1) Whether the judgement and decree passed by the Lower Appellate Court are in consonance with law and evidence on record?*
>
> *(2) Whether the Lower Appellate Court has correctly appreciated the documents of title of the appellant-defendant (Exhibits 105 and 106)?*
>
> *(3) Whether the appellant-defendant would acquire title by adverse possession in view of the facts established on record?*
>
> *(4) Any other question which may be raised at the time of hearing?"*

5. Learned advocate for the defendant has mainly argued that by virtue of sale deed produced vide Exhibits-105 and 106, the owners of the suit property i.e. Vitthaldas Pranjeevandas has sold the property to the defendant and pursuant to the said sale deed, the defendants have become the owners of the suit property. The entire case of the defendant is on the ground that by virtue of the said sale deed produced vide Exhibits-105 and 106, the defendant has become the owner of the suit property. Even in the cross-examination of defendant no.1 dated 20.02.1990, defendant no.1 has categorically stated that the defendant has become owner by virtue of the said sale deed and therefore, as the plaintiff has not challenged the said sale deed, the plaintiff cannot claim any right in the suit property as the owners of the suit property have sold the suit property to the defendant. Moreover, it has also been argued that even before the execution of the sale deed, the defendants were in possession of the suit property as a tenants and therefore also, the Appellate Court could not have quashed and set aside the order passed by the Trial Court and in view of the fact that the defendant has been in possession of the suit property for the last 60 years, the claim of the defendant is also on the basis of the defendants being the owner by way of adverse possession of the suit property and the said contention has not been dealt with by the First Appellate Court and therefore, it has been

argued that the First Appellate Court could not have quashed and set aside the order passed by the Trial Court and the judgment and decree passed by the First Appellate Court is not in consonance with the law and evidence on record and that the First Appellate Court has not correctly appreciated the documents of title of the appellant produced vide Exhibits-105 and 106 and in view of the fact that the claim of the defendant is also on the ground that the defendant is the owner of the suit property by way of an adverse possession, the present Second Appeal is required to be allowed.

6. None appeared for the respondent-plaintiff.

Analysis

7. Having heard learned advocate for the defendant and considering the judgment and decree passed by the Trial Court wherein the Trial Court had framed following issues:

> *"1. Whether the Plaintiffs prove that they are the owners and occupants of the land mentioned in Para 1 and 2 of the plaint?*
>
> *2. Whether the Plaintiffs are entitled to get prohibitory injunction order to get the western side door of the house of the Defendant closed?*

3. Whether the Plaintiff are entitled to get prohibitory injunction order for removal of raised platform admeasuring 3 x 15 feet situated on the western side of the house of the Defendant?

4. Whether the Plaintiffs are entitled to get prohibitory injunction order for removal of toilet constructed by the Defendant?

5. Whether the Plaintiffs prove that the Defendant built raised platform and toilet unlawfully in the land of his ownership in the year 1981?

6. Whether the Plaintiffs prove that the Defendant does not have right to keep a door on the western side of his property?

7. Whether the Suit of the Plaintiff is barred by non-joinder of parties?

8. Whether the Suit is filed within time-limit?

9. Whether the Suit of the Plaintiff is barred by delay, laches and acquiescence?

10. Whether the Suit is the Plaintiff is not filed with appropriate Court Fee?

11. Whether this Court has jurisdiction to conduct this Suit?

12. Whether the Defendant proves that he became owner the suit land due to adverse possession?

13. Whether the Defendant proves that he is the tenant of this property from the time prior to execution of sale-deed?

14. Whether the Defendant proves that he is in possession of the suit land for more than 60 years that is located on their western side?

15. What order and decree?"

8. The fact remains that the defendant has taken three different defences (i) By virtue of sale deed Exhibits-105 and 106 the

defendant has become owner of the suit property (ii) That the defendant is a tenant in the suit property (iii) The defendant has become owner of the suit property by virtue of adverse possession.

9. Taking into consideration the said fact, it would be required that the background of the suit property is mentioned herein, the suit property belonged to Chunilal, Vitthalbhai as well is Thakorlal Pranjeevandas. The plaintiffs are the successors of Chunilal and the defendants are claiming their right through Vitthalbhai Pranjeevandas. The ownership of the Chunilal and thereafter the plaintiffs being successor in title, can be clearly established from the property card produced at Exhibit 49. The documents produced vide Exhibit 49 i.e. the property card, Exhibit-51 to 56, clearly establish that the plaintiffs are the owners of the suit property and in view of the disputes between the predecessor in title of the plaintiffs and predecessor in title of the defendant, the matter was referred to arbitrator and in Regular Civil Suit No.194 of 1925 which was delivered by Joint S.C.Sub-Judge of Bharuch, wherein Thakorlal Pranjeevandas is shown to be the plaintiff wherein ultimately, if the original award of the arbitrator which is produced, vide Exhibit-84, is perused, the arbitrator has clearly held that the land except the corner land is shown to be the ownership of predecessor in title of the plaintiff, whereas the

corner land is in ownership of the predecessor in title of the defendant and the District Court had already passed a decree in favour of plaintiff therefore, the said award has become decree of the Court and by virtue of the said decree, the plaintiff can claim their ownership in respect of the above land except the corner land.

10. In view of the said fact, when it has already been held that the plaintiffs are the owners of the suit property except the corner land and sale deed that was executed by Vitthaldas Pranjeevandas was for the entire suit land, which also includes the corner land and therefore, the Appellate Court has rightly held that Vitthaldas Pranjeevandas could not have executed a sale deed for the entire suit land and the sale deed that could have been executed only with respect to 34 feet/ 17 feet 10 inches**,** and therefore the judgement and decree passed by the First Appellate Court is in consonance with the law and evidence on record therefore, the substantial question of law no.1 is in the affirmative.

11. With respect to the 2nd substantial question of law which is with respect to whether the Lower Appellate Court has correctly appreciated the documents of title of the appellant-defendant (Exhibits 105 and 106)?. The fact remains that by virtue of the said sale deed produced vide Exhibits-105 and

106, Vitthaldas Pranjeevandas has sold the entire suit land to the defendants but the fact remains that by virtue of arbitral award and the decree that was passed by the District Court, the said Vitthaldas Pranjeevandas was the owner of the entire suit property except for the corner land and it has been held that the predecessor in title of the plaintiffs were the owners of the remaining land and therefore, the First Appellate Court has rightly appreciated the documents of title of the defendant vide Exhibits-105 and 106 and therefore, in the affirmative.

12. The 3rd substantial question of law is with respect to Whether the appellant/defendant would acquire title by adverse possession in view of the facts established on record, with respect to the said substantial question of law, if the written statement of the defendant is taken into consideration the defendant has stated that by virtue of the sale deed produced vide Exhibits-105 and 106, whereby half portion of the corner land has been purchased by the defendant from Brijmohandas i.e. the son of Vitthaldas and the remaining one half portion of the corner land, the defendant has purchased from Narendrabhai Vitthaldas and it seems that two sons of Vitthaldas have divided the property shown as corner land and half the portion falling to the share of Brijmohandas was sold by him to the defendant under the first document dated 06.05.1917, whereas the remaining portion of the corner land

was sold by another brother Narendrabhai Vitthaldas to the defendant under the second document dated 28.05.1917. The fact remains that though in the written statement, the defendant has taken a defense that the defendant has become owner by way of adverse possession. As per the perusal of the pleadings in the written statement, the defense that has been taken by the defendant is based on adverse possession and being owner by way of registered sale deed, produced at Exhibits 105 and 106 and third defence to be in possession is as a tenant in the suit premises. The fact remains that there are contrary pleadings as to, on one breath, the plaintiff is contending that the defendant has become owner of the suit property by way of registered sale deed and even in the cross-examination, the defendant has claimed that he has become the owner of the property by virtue of the registered sale deed, therefore, there are contrary pleadings of the defendant, as defendant cannot be permitted to take both pleas at the same time.

13. The law with respect to adverse possession is very clear, the possession of the defendant has to be upon clear, continuous and hostile, to the claim of the possession and claim of the defendant has to be on the ground of being adverse to the plaintiff.

14. Moreover, mere possession of whatsoever long period does not

convert the said property to be in adverse possession. Possession of the defendant cannot be considered to be adverse only on the fact that the plaintiff had not filed any application for the purpose of recovering the possession of the suit premises from the defendant there has to be some overt act on the part of the defendant indicating assertion of hostile title. Therefore, mere continuation of unauthorized possession is not enough. From the pleadings, the defendant has to show that there was a specific act of exclusive possession coupled with the fact that to hold as owner in exclusion to the actual owner.

15. There has to be an intention to hold the suit property to the title of true owner. In the present case, the possession that the defendant had, was not hostile declaration of his title. Moreover, for claiming adverse possession, mere possession does not translate into possessory title, until the possessor hold the property adverse to the title of the true owner.

16. In the present case the defendant who is claiming adverse possession was required to established the date on which defendant came in possession, the nature of possession, the factum of possession, the knowledge to the true owner, the duration of possession and that the possession was open and undisturbed and therefore, it cannot be said that the possession and nature of the possession was ever on the ground of adverse

possession.

17. In the present case, though the plea of adverse possession has been pleaded, the same has been pleaded without any proper particular such as, when did the possession of the above referred property become adverse. The entire burden of proving that the possession being adverse was on the defendant and the defendant has miserably failed to prove that the possession of the defendant was hostile by way of cognate evidence.

18. Moreover, on one hand, the defendant claimed that the defendant had the title of the suit property by way of registered sale deed produced vide exhibits 105 and 106 and the said fact is also reiterated in the cross-examination and therefore, an alternative plea of adverse possession has been sought simultaneously, with a plea of title, could not have been sought by the defendant. Moreover, at the same time, the defendant has also claimed to be in possession of the suit property as a tenant and as held by the Hon'ble Apex Court in the case of **Brij Narayan Shukla (D) Thr. Lrs. Vs. Sudesh Kumar Alias Suresh Kumar (D) Thr. Lrs. and Others** reported in **2024 live law (SC) 17,** the tenant cannot claim adverse possession against the landlord since their possession is permissive in nature. Therefore, even on the said ground, the defendant

could not have claimed adverse possession and with respect to the substantial question of law no.3, it is held that the defendant could not acquire title by adverse possession in view of the facts established on record.

19. In the case of **Jaichand (Dead) through Lrs and Other v. Sahnulal and Another** reported in **2024 SCC OnLine SC 3864**, the Hon'ble Apex Court has observed as under:-

> *"28. It is thus clear that under Section 100 CPC, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence."*

20. Therefore, also the defendant has miserably failed to show that the order passed by the Appellate Court is against the well settled principles of law**.**

21. In view of the aforesaid facts, the substantial questions of law are answered as follows:

"(1) Whether the judgement and decree passed by the Lower Appellate Court are in consonance with law and evidence on

record?

Answer: **In affirmative.**

(2) Whether the Lower Appellate Court has correctly appreciated the documents of title of the appellant-defendant (Exhibits 105 and 106)?

Answer: **In affirmative.**

(3) Whether the appellant-defendant would acquire title by adverse possession in view of the facts established on record?

Answer: **In Negative."**

22. Under the circumstances, this Second Appeal is devoid of any merits. The defendant has failed to prove his case before the Appellate Court. This Court does not find any substance in the present Second. In view of the order passed in the Second Appeal, the connected Civil Application does not survive and the same is accordingly disposed of.

(SANJEEV J.THAKER,J)

URIL RANA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RANA URIL K(HC01406), PRIVATE SECRETARY, at High Court of Gujarat on 01/09/2025 18:44:44